



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/EV/20/0888**

**Re: 8 Lornhill Crescent, Alloa, FK10 2JL ("the Property")**

### **Parties**

**Mr Stuart Comrie (Applicant)**

**Miss Daniela Barnes (Respondent)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

### **Background**

1. The application was received by the Tribunal originally under Rule 65 on 13 March 2020. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 1 March 2016 until 1 September 2016 then continuing monthly thereafter until terminated by either party giving 2 months' notice;
- (ii) Section 33 Notice dated 5 January 2020 specifying that the tenancy would terminate on 8 March 2020;
- (iii) Royal Mail track and trace confirming the Section 33 Notice and Notice to Quit was collected on 8 January 2020;
- (iv) Section 11 Notice to Local Authority;

- (v) AT6 dated 9 March 2020 specifying the grounds for possession as being Ground 8 and that the earliest date for raising proceedings was 8 March 2020;
- (vi) Notice to Quit dated 5 January 2020 which did not specify the date to quit.

2. The application was considered by the Tribunal and further information was requested by letter of 30 June 2020. In particular the Applicant was requested to provide the following further information:

1. *Please provide a copy of the AT6 Notice issued to the Respondent together with evidence that it was served on her. If you have not served a AT6 Notice please explain the basis upon which the Tribunal can proceed to consider the application in terms of Rule 65.*
2. *You have lodged a Section 33 Notice together with a document entitled "Notice to Quit". However, the Notice to Quit does not appear to be valid as it does not specify the date upon which the respondent is to vacate the property and does not contain the required prescribed information. If you wish to amend the application to Rule 66, please clarify the position regarding the Notice to Quit.*

The Applicant was asked to respond by 14 July and warned that the application may be rejected if the further information was not provided.

3. No response was received from the Applicant and the case was again considered by the Tribunal on 10 August 2020.

### **Reasons for Decision**

4. The Tribunal considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

#### *"Rejection of application*

*8.-(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if-*

- (a) they consider that the application is frivolous or vexatious;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

*(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph ( 1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."*

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".*

6. The application seeks to proceed under Rule 65 using Ground 8 of Schedule 5 to the Act. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 1 March 2016 until 1 September 2016 then continuing monthly thereafter until terminated by either party giving 2 months' notice. The Notice to Quit does not state any date by which the Respondent should quit and remove - which was patently wrong. The tenancy was not validly terminated at its "ish" and continues as a consequence.

7. The Notice to Quit did not contain the statutory information specified in ***The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (Regulations)***. Failure to incorporate the prescribed information renders the Notice to Quit invalid.

8. The AT6 served by the Applicant specifies that the earliest date for raising proceedings was 8 March 2020. The AT6 is signed and dated 9 March 2020 which post-dates the earliest date for raising proceedings. The Applicant has accordingly failed to provide the Respondent with the statutory period of notice under section 19 of the Act (two weeks). The Tribunal cannot dispense with the requirement to serve such notice in terms of section 19(5) of the Act.

The Tribunal cannot grant an order for possession for a Ground which has not been notified and served with appropriate notice in an AT6.

9. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Alan Strain

10 August 2020

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Legal Member/Chair

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Date