

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

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

in connection with

Ground Right, 1 Gibson Terrace, Dundee, DD4 7AG

Case Reference: FTS/HPC/EV/19/0907

Mrs Valerie Baird, 4 Inver Terrace, Muirhead, Dundee, DD2 5LS ("the applicant")

Mrs Linda Fraser, Ground Right, 1 Gibson Terrace, Dundee, DD4 7AG ("the respondent")

1. On 20 March 2019, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for Assured/Short Assured Tenancy: possession on Mandatory or Discretionary Grounds.

The following documents were enclosed with the application:-

- Copy Notice to Quit
- Copy Tenancy Agreement
- Copy AT6
- Copy Section 33 Notice
- Copy Notice to Leave

- Copy AT5

At Part 5 of the application form the possession/eviction grounds were stated as “Ground 1 – Landlord intends to sell the let property.”

By letter dated 22 March 2019 the Tribunal requested sight of a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003. The Tribunal wrote again to the applicant on 29 April 2019 in the following terms:

‘Before a decision can be made, we need you to provide us with the following:

- On 22 March 2019 we wrote to you to request that you provide a copy of the notice given to the local authority under section 11 of the Homelessness etc (Scotland) Act 2003. You have failed to do so. Your application cannot proceed without this being provided.
- We note that you have raised your application under Rule 65, being the relevant rule for repossession of a property let under an assured tenancy. However your tenancy commenced on 12 May 2018 and accordingly cannot be an assured tenancy. By default it can be deemed to be a Private Residential Tenancy. The correct rule for raising repossession proceedings under a Private Residential Tenancy is Rule 109. Please confirm if you wish to amend your application for it to be considered under Rule 109?
- You have lodged a Notice to Leave which purports to have been issued on the basis of Ground 1, being that you intend to sell the property. Your Notice to Leave contains no attached evidence of your intention to sell, as is required at Part 3 of the Notice. Please confirm what evidence was attached to the Notice, and provide us with a copy of either your Letter of Engagement with a solicitor/estate agency to market the property for sale, or alternatively a copy of the Home Report obtained for the property.
- Please provide proof of service of the Notice to Leave on the tenant.’

It was requested that a reply be received from the applicant by 13 May 2019. An

email was received from the applicant on 30 April 2019 in the following terms:

'Re providing copy of Section 11: please see previous email for explanation of incorrect email address being used when request sent resulting in delay of response. Re type of tenancy: The tenant moved into the property on 23rd May 2007 and her tenancy agreement has been renewed automatically each year. Hence the tenancy agreement sent to you shows beginning 20th May 2018. I thought it would still be a short assured tenancy as indicated on mygov.scot/types-of-tenancy page (copy attached). Is this incorrect?

Re Notice to Leave: The Notice to Leave was hand delivered to the tenant so I cannot provide proof of delivery. The tenant can confirm she received it. I intend to sell the property but have not engaged a solicitor or had a Property Report carried out yet as I am waiting to see if the property requires upgrade before selling which would affect the value of the property. Also to be sold at my convenience. I also attach copy Notice to Quit and proof of delivery for such. The tenant was advised that I was required to provide one.'

DECISION

2. I considered the application in terms of Rule 8 of the 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;*
- (b) the dispute to which the application relates has been resolved;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*
- (d) they consider that the application is being made for a purpose other than a*

purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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."

3. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

4. '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*". It is that definition which I have applied as the test in this application and, on consideration of the test, I have determined that this application to consider in this application is frivolous, misconceived, and has no prospect of success.
5. The tenancy agreement provided in the application is dated 20 May 2018 and therefore cannot be a Statutory Assured Tenancy. Section 12 (1A) of the Housing (Scotland) Act 1988, as amended, provides:

"A tenancy cannot be an assured tenancy if it is granted on or after 1 December 2017."

6. The tenancy is deemed to be a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). Schedule 3 of the 2016 Act covers repossession/eviction grounds and paragraph 1 of Schedule 3 concerns the eviction ground where a landlord intends to sell. Paragraph 1 of Schedule 3 provides:

'(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord –

(a) is entitled to sell the let property, and

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)-

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."

It is clear from the email from the applicant (the terms of which are narrated above) that she has not yet instructed solicitors/estate agents to market the property for sale and has not obtained a Home Report for the property. The First-tier Tribunal for Scotland, Housing and Property Chamber would accordingly not be in a position to grant an order for eviction/repossession on the basis of Paragraph 1 of Schedule 3 of the 2016 Act.

7. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.
If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

A Mathie

Anne Mathie
Legal Member
17 May 2019