



**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/20/0741**

**Re: 29c (1/2) Baldovan Terrace, Dundee, DD4 6NQ ("the Property")**

### **Parties**

**Frances Herring, Mr William David Herring (Applicant)**

**Ms Valerie Bruce (Respondent)**

**MacHardy, Alexander & Whyte WS (Applicant's Representative)**

**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 under Rule 66 on 2 March 2020. The grounds for possession/eviction were stated to be termination of a Short assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The following documents were enclosed with the application:

- (i) SAT commencing 29 June 2011;
- (ii) AT5 dated 7 June 2011;
- (iii) Notice to Quit dated 22 December 2019;
- (iv) Section 33 Notice dated 22 December 2019;
- (v) Section 11 Notice and email serving dated 2 March 2020.

2. The application was considered by the Tribunal and further information was requested by letter of 23 April 2020 as follows:

*“clarify how the Notice to Quit/ Section 33 Notice were served?”*

The Applicants’ Representatives were given until 7 May 2020 to provide the information and informed that if it was not provided the President may decide to reject the application.

3. The Applicants’ Representatives responded by email of 23 April 2020 informing the Tribunal that they were no longer acting for the Applicants and copying the further information request to the Applicants.

4. The application was considered again by the Tribunal on 8 July 2020. No response had been received to the further information request. The Applicants were requested:

- *Please provide the information previously requested, namely details of how and when the Section 33 Notice and Notice to Quit were given to the Respondent, and provide evidence of same.*
- *It also appears that the Notice to Quit is invalid as the date specified in the Notice is not an ish or end date of the tenancy. Please confirm the basis upon which the Tribunal can consider the application.*
- 

*Please reply to this office with the necessary information by 22 July 2020. If we do not hear from you within this time, the President may decide to reject the application.*

No response was received.

### **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".*

5. The application seeks to proceed under Rule 66 and section 33 of the Act. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. To have been validly terminated the Notice to Quit and Section 33 Notices require to have been served upon the Respondent. No evidence of service has been produced. Furthermore, the ish date of the SAT is the 29<sup>th</sup> of the month. The Notice to Quit specifies the 28<sup>th</sup> of February 2020 as the ish date and is accordingly invalid. The Tribunal would not be able to grant an order to repossess the Property as the tenancy had not been validly terminated.

7. 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 Applicant has failed to provide necessary information requested within a reasonable time. 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

**Alan Strain**

---

**Legal Member/Chair**

**24 August 2020**

---

**Date**