



**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/23/0859**

**Re: Flat 3/2, 1 Canning Street, Dundee, DD3 7RZ ("the Property")**

**Parties**

**Mr Shadaman Khan, Mrs Lamisa Khan (Applicant)**

**Mrs Linda Etchels (Respondent)**

**Campbell Boath Solicitors (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.**

**Background**

1. The application was received by the Tribunal originally under Rule 65 on 16 March 2023. The grounds for possession/eviction were stated to be Ground 8 and 11 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following relevant documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 1 November 2017 until 1 November 2018;
- (ii) Notice to Quit dated 22 November 2022 specifying that the tenancy would terminate on 1 February 2023;

- (iii) AT6 dated 22 November 2022 specifying the grounds for possession as being Ground 8 and 11, and that the earliest date for raising proceedings was 22 December 2022.

2. The application was considered by the Tribunal and further information was requested by letters of 6 April 2023 and 18 May 2023. In particular the Applicant was requested to provide the following further information:

“Please provide information as to how you consider that the Notice to Quit was issued validly to an ish date of the tenancy. The initial period of lease stated in clause 1 was 1 year from 1.11.2017 to 1.11.18 with no provision for the lease to then continue month to month the Tribunal could identify in the document. In that case the lease would continue from year to year by tacit relocation. This does not seem to support the date of 1 February of any year as a valid ish date.”

3. The Applicant replied by email of 31 May 2023 in the following terms:

“We consider the Notice to Quit to be valid as we are unsure if an AT5 was provided with the lease. We are therefore treating this lease as a Statutory Assured Tenancy and therefore the notice we have given to the Respondent was reasonable given the substantial amount of arrears owing to our client. Furthermore, the lease does not contain a Termination clause referring to what period of notice is required by either the tenant or the Landlord. This is not a Rule 66 Application requiring the tenancy to end on an ish as a Section 33 Notice has not been issued to the Respondent. If the First-tier Tribunal do not agree with this response then we would seek permission from them to dispense with the need to serve fresh Notice to Quit and simply proceed with Notice of Proceedings.”

### 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 and 11 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 November 2017 until 1 November 2018. It continued by tacit relocation on an annual basis thereafter. The Notice to Quit states 1 February 2023 as the date by which the Respondent should quit and remove. The 1 February 2023 was not an “ish” of the tenancy. The tenancy was not validly terminated at its “ish” and continues as a consequence.

7. The Tribunal considered whether the application could still proceed in terms of Section 18(6) of the 1988 Act. This states *“The First tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question”*. In ***Royal Bank of Scotland v Boyle 1999 HousLR*** it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, *“(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate”*. The Tribunal notes that the SAT which has been produced does not refer to or incorporate the grounds for possession relied upon in the application, as required by Section 18(6). As a result the Applicant has failed to meet the requirements of section 18(6) and cannot proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation and the application cannot succeed.

8. 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. 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.**



23 June 2023

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Legal Member/Chair

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Date