Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of Fiona Watson, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/19/2031

Re: Property at 56 William Street, Hamilton, ML3 9AX ("the Property")

Parties:

Mr Mr Chris Rough, Mrs Suzanne Rough ("the Applicant")

Miss Tamara Podoprigora, Mr Aldis Lode ("the Respondent")

1. On 1 July 2019 an application was received from the applicant. The application was made under Rule 66 of the Rules being an application by a landlord for possession on termination of a property let under a Short Assured Tenancy and in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").

2. The following documents were enclosed with the application:

    (i) Copy Tenancy Agreement;
    (ii) Copy Form AT5;
    (iii) Copy Notice to Quit;
    (iv) Copy Form AT6;
    (v) Copy email correspondence between Applicant and South Lanarkshire Council.

3. A request for further information was sent to the Applicant by letter dated 18 July 2019. Said letter requested the following information:

    (i) Copy notification to South Lanarkshire Council under s11 of the Homelessness etc. (Scotland) Act 2003;
    (ii) Proof of service of the Notices on the Respondents;
    (iii) Copy Notice under s33 of the Housing (Scotland) Act 1988 and proof of service of same;
    (iv) Proof of landlord registration with the local authority;
    (v) Written authorisation from the landlord allowing the applicant to act on her behalf.

On 23 July 2019 the Applicant responded to each of the points raised by the Tribunal.

4. A further request for further information was sent to the Applicant by letter dated 8 August 2019. Said letter requested the following information:
    (i) Copy AT5 relating to the lase lodged;
    (ii) Confirmation of the maiden name of Suzanne Rough;
    (iii) Submissions from the Applicant on the validity of the Notice to Quit lodged;
    (iv) Submissions from the Applicant on the validity of the AT6 lodged.

5. On 8 and 9 August 2019 the Applicant responded to the points raised by the Tribunal.

Decision

6. I considered the Application in terms of section 33 of the 1988 Act and Rule 8 of the Rules.

Rule 8 states:-

"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."

7. After consideration of the application together with the documents and further information provided by the Applicant, I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

REASONS FOR DECISION

8. "Frivilous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Midlenhall) 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 this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

9. Section 33 of the 1988 Act states as follows:

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

(a)that the short assured tenancy has reached its finish;

(b)that tacit relocation is not operating; and

(c) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

10. I considered the notice issued in terms of section 33 of the 1988 Act ("the s33 Notice"). The said notice lodged with the application states within it as follows:

    "I require vacant possession as at 30/04/19. The tenancy will reach its termination date as at that date and I now give you notice that you are required to remove from the property on or before 30/6/19"

    The s33 Notice is dated 28 February 2019. A photograph showing an envelope bearing the names and address of the Respondents being put through a letterbox is lodged. There is no evidence of what was in the envelope, nor any property identified, nor date of service identified. Furthermore, a s33 Notice must be served by either Recorded Delivery post or Sheriff Officer delivery. I am not satisfied that the s33 Notice was competently served.

11. I also considered the Notice to Quit lodged by the Applicant. I was not satisfied that this was competent due to the following reasons:

a) A Notice to Quit must specify a date of removal from the Property which coincides with the ish date of the tenancy agreement. The Notice to Quit lodged states *"I hereby give you formal Notice to Quit the premises occupied by you at 56 William Street, Hamilton, ML3 9AX by 31st April 2019. Extendable to 31st May if requested".* The Short Assured Tenancy Agreement lodged with the application had a start date of 1 June 2007 and end date of 1 January 2008. It is then expressly stated at Clause 1 that it will continue "*thereafter from month to month or unless terminated by either party giving the other not less than two months' written notice of termination.*" Accordingly, the tenancy agreement can be deemed to be running to the 1st day of each month after the specified end date. Any Notice to Quit issued must specify a date for removal tying in with that ish date. This Notice to Quit does not do so, and gives a date earlier than the ish, and is accordingly incompetent on that basis;

b) The applicant has confirmed that the notice to quit was hand delivered to the Property by the applicant. I considered the decision of *Govan Housing Association v Kane 2003 Hous LR 125*, which was also referred to in the case of *City of Edinburgh Council v Martin Smith [2016] SC EDIN 42* in relation to

the validity of hand delivery of a notice to quit. *Govan* gives authority that hand delivery to the Property of a notice to quit by anyone other than Sheriff Officer is not competent service. Accordingly I do not consider that this notice has been competently served.

12. Section 33(1)(b) requires the applicant to satisfy the Tribunal "*that tacit relocation is not operating."* A competent Notice to Quit must be issued to prevent tacit relocation from operating. Accordingly, given the competency issues detailed above, I am not satisfied that section 33(1)(b) has been complied with.

13. Accordingly, for the reasons outlined above I consider that the application for an order for repossession should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

14. It should also be noted that the Applicant must intimate a notice to the Local Authority in terms of s11 of the Homelessness etc. (Scotland) Act 2003. That form of notice is contained within Schedule 1 to the Notice to Local Authorities (Scotland) Regulations 2008. The wrong notice has been intimated by the Applicants to the Local Authority and they would appear to have intimated a Schedule 2 notice. The Tribunal must be satisfied that the correct notice as required under the said Regulations has been intimated before an order for repossession can be granted.

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,

Fiona Watson
Legal Member
22 August 2019