



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

166 Kingsheath Avenue, Rutherglen, G73 2DB ("the Property")

Case Reference: FTS/HPC/EV/20/1117

Paul Terry Holmes, 233 Ballysillan Road, Belfast, BT14 7QT ("the Applicant")

Emma Farrell, 166 Kingsheath Avenue, Rutherglen, G73 2DB ("the Respondent")

1. By application received on 22 April 2020 the Applicant seeks an order for recovery of possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988. The Applicant lodged a number of documents in support of the application including AT6 Notice, Notice to Quit and Sheriff Officer certificate of service. The Applicant seeks an order for possession of the property on grounds 8, 11 12 and 13 of Schedule 5 of the ("the 1988 Act").
2. On 14 May 2020 the Tribunal issued a request for further information. The Applicant was asked to provide a copy of the tenancy agreement. The Applicant was also asked to clarify the position regarding the Notice to Quit which did not appear to give the Respondent at least 4 weeks notice, as required by the relevant legislation. In his response, the Applicant advised that the tenancy agreement had been lost. A copy letter from Govanhill Law Centre dated 12 October 2018 was submitted as evidence of the existence of a tenancy. The Applicant also stated that the Notice to Quit is valid as only two

weeks notice is required when an order for possession is sought on the grounds stipulated in the application.

DECISION

3. The Legal Member 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;

(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.”

- 4. After consideration of the application and documents lodged in support of same the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a)**

of the Procedure Rules.

Reasons for 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 LR9. He indicated at page 16 of the judgment; "*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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The Applicant seeks recovery of possession of an assured tenancy on grounds 8, 11, 12 and 13 of Schedule 5 of the 1988 Act. No tenancy agreement has been produced. The only evidence produced of the existence of a tenancy is a letter from a law centre, written on behalf of the Respondent. This describes the Respondent as the tenant of the property. However, the letter contains no information as to the start date or term of the tenancy. In the application form the Applicant indicates that the tenancy is an assured tenancy in terms of the 1988 Act.
7. The Notice to Quit which has been lodged by the Applicant is dated 21 February 2020. The certificate of service lodged indicates that it was served by Sheriff Officer on the same date. It purports to terminate the tenancy contract on 9 March 2020. If, as the Applicant states, the tenancy started between 2 January 1989 and 30 November 2017, the tenancy is an assured tenancy in terms of the 1988 Act. In the absence of a written tenancy agreement which states the term of the tenancy, a term of one year is usually assumed. However, no information regarding the start date has been provided. In the absence of a start date, it is not possible to determine the ish date. As a Notice to Quit can only terminate the tenancy contract at the ish, it is not possible to determine whether a valid Notice to Quit has been served. Furthermore, section 112(1) of the Rent (Scotland) Act 1984 ("the 1984 Act") states "No notice by a landlord or a tenant to quit any premises let as a dwellinghouse shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.". The Notice to Quit lodged with the application was served by Sheriff Officer on 21 February 2020 and seeks to terminate the tenancy contract on 9 March 202. The Applicant has therefore failed to give the Respondent 4 weeks' notice, as required by the 1984 Act. The two week notice period referred to by the Applicant, in his response to the further information request, applies only to the AT6 Notice served in terms of Section 19 of the 1988 Act. The Legal Member

concludes that the Notice to Quit lodged with the application is invalid and that tenancy contract has not been terminated.

8. The Legal member proceeded to consider whether the application could still be considered 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 Legal Member notes that, as no tenancy agreement has been produced, the Applicant is unable to establish that the grounds of possession, referred to in the AT6 and the application, have been incorporated into the agreement between the parties, 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.

9. As the Notice to Quit is invalid and the requirements of the 1988 Act have not been met the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.

Josephine Bonnar

Josephine Bonnar
Legal Member
10 June 2020