



DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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 Rules")

in connection with

1/2, 100 West Princes Street, Helensburgh, Dunbartonshire, G84 8XD ("the Property")

Case Reference: FTS/HPC/EV/22/2938

Ms Marina Muir & Mr Graham Muir, 3 Ardenconnel Way, Rhu, Dunbartonshire ("the Applicants")

Ms Carolyn Drummond, 1/2, 100 West Princes Street, Helensburgh, Dunbartonshire, G84 8XD ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged a copy of the tenancy agreement, form AT5 and copies of the Notice to Quit and Section 33 Notice. No evidence of service of the Notices has been lodged by the Applicant. The Tribunal wrote to the Applicants on 20 September 2022 requesting further information. One of the matters raised was whether the Notice to Quit specified a removal date which is an ish date. The Applicants responded by email on 2 October 2022, advising that 5th September 2022 was the ish date.

DECISION

2. 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.

3. **After consideration of the application and the documents submitted by the Applicant 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 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 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.
5. It has been noted clause Second of the tenancy agreement provides *"The period of let shall be from the fifth of November two thousand and fifteen until fifth of May two thousand and fifteen."* By email of 2 October 2022, the Applicants clarified that the period of the tenancy was in fact 5th November 2015 to the 5th May 2016. On the basis that there is no further provision in relation to the term and on the basis that the tenancy had not been terminated, tacit relocation operated, which means that the tenancy automatically renewed on the same terms. The section 33 notice states *"...I/we hereby give you notice that I/we require possession of the property at 1/2, 100 West Princes Street, Helensburgh leased to you in terms of a short assured tenancy which commenced on 5th November 2015 and I require vacant possession as at 5th September 2022. 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 5/9/22."* The Notice to Quit states *"I hereby give you formal notice to quit the premises occupied by you at 1/2, 100 West Princes Street, Helensburgh by 5th September 2022."* Given that the initial term of the tenancy was from 5 November 2015 to 5 May 2016, the ish date must fall in November and May of each year. In order for the Notice to Quit to be valid, it would have to terminate the tenancy at the ish date.
6. It appears to the Legal Member that the Notice to Quit is invalid, having called upon the Respondent to leave the property during its term.
7. The Legal Member therefore 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.

Nicola Irvine
Legal Member
28 October 2022