

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

185D South Street, Perth, PH2 8NY ("the Property")

**Case Reference: FTS/HPC/EV/19/0335**

**MR IAN CADMAN ("the Applicant")**

**MR VIKRANT DEVGUN, MS EMMA HOLMES ("the Respondent")**

1. The application was made under Rule 65 of the Rules being an application by a private landlord for an order for possession of a property in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The application was received by the Tribunal on 5 February 2019. Attachments were provided with the application form to support the application and these attachments included, amongst other things, copies of a Notice to Quit ("first NTQ") and a Notice under Section 19 of the 1988 Act dated 18 March 2018 ("first Form AT6") together with a postage receipt dated 19 March 2018. A copy of the written tenancy agreement was also attached.
2. The tenancy agreement between the parties commenced on 1 November 2017 with the initial period of let expiring on 1 May 2018. Thereafter, in terms of Paragraph 1 of the Schedule attached to the written tenancy agreement, the tenancy was to continue on a month to month basis until terminated. None of the Grounds within Schedule 5 of the 1988 Act are reproduced in the written tenancy agreement, nor are their essential ingredients contained within it.
3. The first NTQ sought to terminate the tenancy agreement on 18 April 2018. It was posted on 19 March 2019. The first Form AT6, served with the Notice to Quit, specified that the Applicants were to seek an order for possession on the basis of Grounds 11 and 12 of the 1988 Act.
4. A request for further information dated 15 February 2019 was made to the Applicant. This highlighted that the Form AT6 accompanying the application had ceased to have effect, in

terms of Section 19(7) of the 1988 Act, on 5 October 2018 and requested a full copy of the accompanying Schedule.

5. The Applicant provided a copy of a Notice under Section 19 of the 1988 Act dated 16 February 2019 ("second Form AT6") and a full copy of the Schedule which accompanies the written tenancy agreement. The second Form AT6 specified Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act but did not specify an earliest date that proceedings may be raised.
6. A request for further information dated 28 February 2019 was made to the Applicant. This highlighted that the second Form AT6 postdated the making of the present application, the lack of an earliest date that proceedings may be raised and drew the Applicant's attention to the terms of Section 18(6) of the 1988 Act.
7. The Applicant provided copies of a Notice under Section 19 of the 1988 Act dated 2 March 2019 ("third Form AT6") and a Notice to Quit also dated 2 March 2019 ("second NTQ"). The third Form AT6 specified Ground 8 of Schedule 5 of the 1988 Act and 16 March 2019 as the earliest date that proceedings may be raised. The second NTQ sought to terminate the tenancy on 16 March 2019.

#### **Decision**

8. The circumstances in which an application is to be rejected are governed by 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."*

9. After consideration of the application, the attachments and correspondence from the Applicant's solicitor, 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 Procedural Rules.

#### Reasons for Decision

10. In this application, the Applicants are seeking an order for possession under Section 18 of the 1988 Act. Section 18 allows a landlord to seek an order for possession where there is an ongoing contractual tenancy between the landlord and tenant. It is subject to the qualification in Section 18(6) which states:-
- (6)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 I of Schedule 5 to this 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.*
11. Irrespective of the validity or not of the three Notices under Section 19 of the 1988 Act, there is a fundamental problem for the Applicant. The first NTQ sought to terminate the tenancy agreement on 18 April 2018. The 18 April 2018 was not a valid *ish* date, that being the date on which the tenancy was due to end, which would always fall on the first day of a calendar month, the tenancy having continued on a month to month basis since 1 May 2018. The second NTQ sought to terminate the tenancy agreement on 16 March 2019. Although this date has not yet been reached, it is clear that this Notice to Quit fails to give the requisite period of notice nor does it contain a valid *ish* date.
12. In the absence of a valid Notice to Quit, there is an ongoing contractual tenancy between the parties. Section 18(6) of the 1988 Act therefore applies. In the present application, the landlord has, at one time or another, sought to rely upon Grounds 8, 11 or 12 of Schedule 5 of the 1988 Act. It is clear that these are not mentioned in the written tenancy agreement. The case of *Royal Bank of Scotland v Boyle* 1999 HousLR 43 and 63 clarified that a written tenancy agreement must either contain a reproduction of the grounds listed in Section 18(6), or at least the essential ingredients of them, before an order for possession can be made in respect of a property let on an ongoing contractual tenancy. As the written agreement in the present application has neither, Grounds 8, 11 or 12 may not be relied upon by the Applicants without the contractual tenancy having first been terminated.

13. '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. Accordingly, the present application is rejected on the basis that it is frivolous.

### **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.

A.Houston

Mr Alastair Houston

Legal Member

8 March 2019