DECISION AND STATEMENT OF REASONS OF DAVID BARTOS, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

Under Rule 8 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

1st floor left, 10 Balmore Street, Dundee DD4 6SY ("the property")

Case Reference: FTS/HPC/EV/19/3188

Mrs Vanessa Cameron, residing at 9 Belfray Mansions, St Andrews Road, Old Langho, Blackburn, Lancashire, BB6 8BS ("the applicant")

Mr Graham Morton, residing at 1st floor left, 10 Balmore Street aforesaid ("the respondent")

1. On 8 October 2019 an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application under section 18 of the Housing (Scotland) Act 1988 for recovery of possession of the property.

DECISION

2. I considered the application in terms of Rule 8 of the 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, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that the application is 'frivolous' and that it would not be appropriate to accept the application within the meaning of Rule 8(1)(a) and (c) of the Procedural Rules.

REASONS FOR DECISION

4. 'Frivolous' in the sense in which it is used in Rule 8(1)(a) has the meaning given by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court,* (1998) Env. L.R. 9. when he said on page 16 of the report of that case: *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless*

or academic". To decide whether this application is 'frivolous' I have to assess whether this application is futile, misconceived or hopeless.

5. In terms of section 18(6) of the 1988 Act it is a pre-requisite for an order for possession that –
   (a) The ground for possession is ground 2 or ground 8 in Part I of schedule 5 to the [1988 Act] or any of the grounds in Part II of that schedule other than grounds 9, 10, or 17; and
   (b) The terms of the tenancy make provision for it to be brought to an end on the ground in question,

   unless the tenancy is a statutory assured tenancy.

6. The Tenancy Agreement dated 12 May and 26 May both 2015 produced to the tribunal along with the application does not make provision for it to be brought to an end on the basis of ground 8 of schedule 5 to the 1988 Act. Grounds 8, 11 or 12 are not set out in the Tenancy Agreement nor are their numbers even referred to. The provisions of clause 37.4 are totally inadequate in their attempt to provide for the tenancy to be brought to an end on the basis of grounds 8, 11 or 12.

7. Furthermore there is nothing to indicate that the tenancy has become a statutory assured tenancy. The tenancy agreement specifies that it continues on a monthly basis after the original end (ish) date of 1 June 2016. For it to become a statutory assured tenancy a notice to quit effective on 1 October 2019 would have been required and together with the tenant have remaining in possession after that date. It is plain that no such notice has been given. The notice to quit dated 30 August 2019 produced with the application requires the respondent to quit on 17 September 2019. Such a notice requires the respondent to quit the property prematurely and is invalid. It was incapable of making the tenancy a statutory assured tenancy.

8. In these circumstances I take the view that the pre-requisite of section 18(6)(b)

cannot be met. Nor is the tenancy a statutory assured tenancy. It follows that the current application is therefore misconceived and doomed to fail.

9. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' within the meaning of Rule 8(1)(a) of the Procedural Rules.

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.

David Bartos
Legal Member acting under delegated powers
19 November 2019