



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/EV/19/1809**

**Re: 5 Broom Road, Rosneath, G84 0RY ("the Property")**

**Parties:**

**Mr Liam Lyon ("the Applicant")**

**Mr Christopher Exley ("the Respondent")**

**Tribunal Member:**

**Alan Strain (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the Tribunal under Rule 65 on 12 June 2019. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:
  - (i) Agreement to let unsigned and dated 5 March 2012 for a 6 month term from the commencement date of 12 March 2012 in respect of the Property;
  - (ii) AT6 dated 27 May 2019 which relies upon Ground 8 and specified 10 June as the earliest date proceedings could be raised;

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- (iii) Notice to Quit dated 18 February 2019 which specifies 18 April 2019 as the date to Quit;
- (iv) Section 33 Notice dated 18 February 2019 which specifies 18 April 2019 as the date the tenancy comes to an end;
- (v) Email correspondence between the Applicant and Argyll and Bute Council; and
- (vi) Email correspondence between the Parties in connection with rent arrears.

2. The application was considered by the Tribunal and further information was requested by letter of 28 June 2019. The Applicant was asked:

- (a) To explain why 18 April 2019 had been selected as the ish date;
- (b) To provide proof of service of the Notice to Quit and AT6;
- (c) To provide the section 11 Notice to the Local Authority.

3. The Applicant responded by email of 28 June 2019. The application was again considered by the Tribunal and further information was requested by letter of 16 July 2019 as follows:

- (a) To explain why he believed 18 April 2019 was an ish in respect of the Property;
- (b) To explain why he considered posting the Notice to Quit and AT6 was an appropriate method of service under section 54 of the Act;
- (c) To explain how the AT6 provided the required period of notice in section 19 of the Act; and
- (d) To explain why his application should proceed in the absence of a section 11 Notice.

4. The Applicant responded by email of 16 July 2019 stating:

- (a) The Applicant considered that he required to give 2 months' notice to terminate the tenancy in accordance with section 33;
- (b) He posted the AT6 by ordinary post on 27 May 2019, emailed the Respondent on 5 June 2019 to advise that he had posted the AT6 and hand delivered a copy of the AT6 on 5 June 2019;
- (c) Possession is sought under Ground 8 and only 2 weeks' notice is required. The AT6 was posted on 27 May 2019 meaning that the 2 week notice period would expire on 10 June 2019; and
- (d) The Local Authority were aware of the position and his application should proceed.

5. The application was again considered by the Tribunal and a further request for information was issued by letter of 2 August 2019 as follows:

- (a) The response did not address why he considered 18 April 2019 to be the ish. There was nothing in the tenancy to suggest 18 April 2-19 was an ish date;
- (b) No evidence of service of the AT6 and Notice to Quit had been produced;
- (c) If service had been effected on 5 June 2019 how did that provide the minimum 14 day notice requirement; and
- (d) For the application to proceed a section 11 Notice should be produced.

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6. The Applicant responded by email of 4 August 2019:

- (a) He stated that the tenancy has been on a rolling month to month basis;
- (b) He gave 2 months' notice which established the termination date of the tenancy;
- (c) Produced a Recorded Delivery Receipt for the Notice to Quit showing that it had been posted on 18 February 2019;
- (d) Restated what he had previously said about service of the AT6; and
- (e) Restated that the Local Authority were aware of the situation.

### Reasons for Decision

7. The Tribunal 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;·*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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."*

8. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) 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"*.

9. The application seeks to proceed under Rule 65. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. The ish date of the tenancy is 12 March and 12 September according to the agreement to let produced by the Applicant. To be validly terminated the Notice to Quit must give notice to quit on the ish date. The Notice to Quit served by the Applicant does not do so. It is invalid and the tenancy has not been terminated. The Tenancy continues by tacit relocation until it has been validly terminated.

10. Furthermore, The Tribunal cannot grant an order for recovery of possession unless the tenancy has either been terminated or the tenancy provides for termination on one of the grounds specified in Schedule 5 to the 1988 Act. The Agreement to Let does not provide for termination on the grounds specified in Schedule 5 to the 1988 Act.

11. Section 19(1) of the Act provides that the Tribunal "shall not entertain proceedings for possession of a house let on an assured tenancy unless" a

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notice has been served in accordance with this section (AT6). Section 19(4) (b) provides that the minimum period of notice is to be 14 days. Given that Ground 8 is relied upon by the Applicant the Tribunal cannot dispense with the requirement for notice (section 19(5)). The AT6 was served by ordinary first class post. It was posted on 27 May 2019. There is no proof of receipt. The AT6 specified that proceedings would not be raised before 10 June 2019. The Applicant accordingly gave less than 14 days' notice and the AT6 is accordingly invalid.

12. The Applicant has not served notice as required by Section 19A of the Act upon the local authority. Section 19A (2) of the Act states that the notice "shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003." The prescribed notice has not been used and accordingly the Tribunal cannot grant the order sought.
13. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of R v North West Suffolk (Mildenhall) Magistrates Court (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

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Legal Member/Chair

*15 August 2019.*

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Date