

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

Flat 2/1, 23 Riccarton Street, Glasgow, G42 7NX

Case Reference: FTS/HPC/EV/19/2046

MR ADNAN ASLAM ("the Applicant")

MR IQBAL ZAFAR, MS SHAGUFTA YASMEEN CHAUDRY ("the Respondents")

Background

1. The application was made under Rule 65 of the Rules being an application by a private landlord for an order for possession upon one of the Grounds stated in Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act"). Attachments were provided with the application form to support the application and these attachments included copies of a Notice in terms of Section 19 of the 1988 Act ("Form AT6"), a Notice to Quit and the written tenancy agreement between the parties.
2. The tenancy agreement commenced on 9 March 2017, with an initial period of let of twelve months. There is no provision within the agreement for the tenancy to continue for any other period of let following the initial twelve month period, in the absence of notice being served by either party.
3. The present application is accompanied by a Notice to Quit dated 11 June 2019 purporting to terminate the contractual tenancy agreement on 26 June 2019. The Notice in terms of Section 33 of the 1988 Act is also dated 24 July 2018 requiring the Respondent to move from the Property as at 23 September 2018.

4. The Form AT6 is dated 11 June 2019. It specifies that proceedings will not be raised before 26 June 2019 and specifies Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act, all relating to the non-payment of rent due under the tenancy agreement.

Decision

5. 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.”

6. **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

7. There are two issues identified with this application. Section 18(6) of the 1988 Act 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.

The Applicant has listed the Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act as being relied upon on the application form. These are all Grounds upon which the Tribunal can make an order in respect of a property let on an ongoing contractual tenancy however, in terms of Section 18(6)(b) of the 1988 Act, the Tribunal shall not make an order for possession of a property let on an assured tenancy, not being a statutory assured tenancy, unless the tenancy agreement provides for it to be brought to an end on these grounds.

8. The copy of the written tenancy agreement provided with the application makes no reference to any of these Grounds, beyond the paragraph immediately after Clause 14, which states:-

I acknowledge that the provisions of the Housing (Scotland) Act 1988 apply to this tenancy and the (i) I have received notice from the Landlord before creation of this tenancy pursuant to and in terms of Section 32(2) of the Act to the effect that the tenancy is a short assured tenancy and (ii) I have received notice by the Landlord before the creation of this tenancy pursuant to and in terms of Section 18(1) of the Act that possession may be recovered in the circumstances contained in Ground 2 of Part 1 of Schedule 5 to the Act.

In terms of *Royal Bank of Scotland v Boyle* (1999) Hous LR 63, a summary of the essential ingredients of the Ground is required, if not exact citation. In the present application, the reference to the provisions of the 1988 Act applying to the tenancy is insufficient to satisfy the terms of Section 18(6).

9. The Tribunal is aware that the Applicant has provided a copy Notice to Quit with the

application. A valid Notice to Quit would terminate a contractual assured tenancy at its *ish*. If a tenant continued to occupy the Property after the *ish* date, this would be by virtue of a statutory assured tenancy. Any or all of the Grounds in Schedule 5 of the 1998 Act can be relied upon by a landlord when seeking an order for possession of a property let on a statutory assured tenancy. In the present application, the tenancy agreement makes provision for an initial period of let of twelve months beginning on 9 March 2017. In the absence of any provision in the tenancy agreement for any other period of let following expiry of the initial period, the principle of tacit relocation must apply. Therefore, in the absence of notice being given by either party prior to the expiry of the initial period of let, the tenancy agreement will have renewed for further periods of twelve months after the initial period of let, with each renewal commencing on 9 March of each calendar year.

10. The copy Notice to Quit accompanying the application is dated 11 June 2019 and purports to terminate the agreement on 26 June 2019. This is not a valid *ish* date on which the tenancy agreement can be brought to an end. Upon the renewal of the agreement by virtue of tacit relocation, the next *ish* date, at the time the Notice to Quit was served, would have been 9 March 2020. Furthermore, the period of notice given is insufficient, with the minimum period being 40 days for a tenancy of a period of let of twelve months.
11. For these reasons, the Notice to Quit served by the Applicant is not valid. Accordingly, there is an ongoing contractual assured tenancy between the parties and Grounds 8, 11 or 12 cannot be relied upon by the Applicant to found proceedings for an order for possession of the property.
12. '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.

Mr Alastair Houston

Mr Alastair Houston
Legal Member
18 July 2019

