

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF LESLEY JOHNSTON, 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 Procedural Rules")

in connection with

CORRAN, ORMSARY, LOCHGILPHEAD, ARGYLL, PA31 8NZ (HOUSE)

Case Reference: FTS/HPC/EV/19/1730

JOHN LITHGOW ("the applicant")

AMI HARRIS AND PHILIP CARRUTHERS ("the respondent")

1. On 4 June 2019, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules being an application for possession on termination of a short assured tenancy under s 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-

- (i) Tenancy agreement in respect of the property known as Corran, Ormsary, Lochgilphead, Argyll, PA31 8NZ (hereinafter 'the property') commencing 1 July 2017;
- (ii) AT5 Notice dated 14 June 2017

- (iii) Section 33 Notice addressed to Ami Harris dated 26 March 2019;
 - (iv) Section 33 Notice addressed to Philip Carruthers dated 26 March 2019;
 - (v) Notice to Quit addressed to Philip Carruthers dated 26 March 2019;
 - (vi) Notice to Quit addressed to Ami Harris dated 26 March 2019;
 - (vii) Royal Mail proof of delivery slip in respect of Philip Carruthers dated 28 March 2019;
 - (viii) Royal Mail proof of delivery slip in respect of Ami Harris dated 27 March 2019
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- (ix) Email from the Applicant's agent to Argyll & Bute Council attaching section 11 Notice
 - (x) Copy section 11 Notice

2. By letter dated 24 June 2019 the Tribunal advised the Applicant that the Notice to Quit dated 26 March 2019 did not appear to conform to the prescribed format (being the format prescribed by the Assured Tenancies Notices to Quit Prescribed Information)(Scotland) Regulations 1988). The letter detailed, verbatim, the prescribed content of the Notice to Quit in terms of the Regulations. The Tribunal asked the Applicant if any other Notice to Quit containing the details outlined in the second paragraph of the prescribed content had been issued to the Respondents.
3. By email dated 27 June 2019 the Applicant's agent resubmitted the documentation listed above and confirmed that the enclosures to the application contained all of the information requested.

DECISION

4. 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."

5. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected on the basis that the application is frivolous or vexatious within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

6. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

7. The Assured Tenancies Notices to Quit Prescribed Information)(Scotland) Regulations 1988 ('the Regulations') provide as follows:

"2. Where a notice to quit is given by a landlord to terminate and assured tenancy under the Housing (Scotland) Act 1988 that notice shall contain the information set out in the Schedule to these Regulations."

The schedule to the regulations provide:

"INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT

- 1. Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the court.*
 - 2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.*
 - 3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre."*
8. The Notice to Quit served on the Respondents in this case contained paragraphs 1 and 3 but did not contain paragraph 2.
9. The Applicant's representative has confirmed that no other Notices to Quit were issued to the Respondents in this case.
10. The Tribunal considers that the Notices to Quit served on the Respondents in this case were not valid and as such, the application made under section 33 of the Housing (Scotland) Act 1988 is bound to fail. That being the case, the Tribunal considers that the application is frivolous in terms of Rule 8(1)(a) of the Procedural

Rules as it has no prospect of success.

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.

Lesley Johnston
Legal Member
10 July 2019