

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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 0/1, 43 Parkneuk Road, Glasgow, G43 2AQ

Case Reference: FTS/HPC/EV/17/0553

JOSEPH CLARKE ("the Applicant")

JOHN CHATHAM ("the Respondent")

1 On 22 December 2017, an application was received from the applicant via its solicitor. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an Assured Tenancy. The following documents were enclosed with the application:-

- (i) Copy Short Assured Tenancy;
- (ii) Copy Form AT6;
- (iii) Copy Notice to Quit;
- (iv) Certificate of Execution of Notice to Quit;
- (v) Copy letter to Glasgow Homelessness Services dated 20 December 2017; and
- (vi) Copy Rent Account Statement.

DECISION

2 I 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;

(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’s solicitor, I consider 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

4 '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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

5 Section 19A of the Housing (Scotland) Act 1988 provides as follows:-

"19A Requirement to notify local authority of proceedings for possession

(1) Where a landlord raises proceedings for possession of a house let on an assured tenancy, the landlord shall give notice of the raising of the proceedings to the local authority in whose area the house is situated, unless the landlord is that local authority.

(2) Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10)."

6 Section 11 of the Homelessness etc. (Scotland) Act 2003 provides as follows:-

"11 Notice to local authorities of proceedings for possession and enforcement of standard securities

(1) Where a landlord raises proceedings for possession of a dwellinghouse, the landlord must give notice of the raising of the proceedings to the local authority in whose area the dwellinghouse is situated, unless the landlord—

(a) is the local authority, or

(b) is required to give such notice to the local authority under any other enactment...

... (3) The Scottish Ministers may by regulations made by statutory instrument prescribe—

(a) the forms of notices to be given under subsection (1) and under the enactments specified in subsection (5) (which [include]¹ the enactments modified by the schedule to this Act), and

(b) the manner in which such notices are to be given."

7 In terms of Regulation 2 of the Notice to Local Authorities (Scotland) Regulations 2008, the Scottish Ministers prescribed that the notice to be given under section 11 of the Homelessness etc. (Scotland) Act 2003 would be in the form found in Schedule 1 to those Regulations.

8 On consideration of the letter issued to Glasgow Homelessness Services by the solicitors instructed by the Applicant dated 20 December 2017, it appears to me that the said letter is not in the form prescribed in the 2008 Regulations. As such, it seems to me that the Applicant has not complied with the requirement to give prescribed notice to the local authority. It follows that this application has no prospect of success and must be rejected on the basis that it is frivolous.

OBSERVATIONS

9 For completeness, I make the following observations on the application and its enclosures which, although not pertinent to my decision, would require to be addressed in any future application:-

9.1 the Notice to Quit is invalid. The termination date noted therein is not an ish; and

9.2 the application refers to Ground 12 of Schedule 5 to the Housing (Scotland) Act 1988, but the form AT6 does not.

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 Andrew Upton
Legal Member
8 January 2018