



**Decision with Statement of Reasons of H Forbes, 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/23/4637**

**Re: 6 Southdene Avenue, Glasgow, G15 7RH ("the Property")**

**Parties:**

**Yumen Lai ("the Applicant")**

**Violet Nelson ("the Respondent")**

**R&J Properties ("the Applicant representative")**

**Tribunal Member:**

**Ms H Forbes (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.**

**Background**

1. An application was received by the Tribunal under Rule 66 on 21<sup>st</sup> December 2023. The Applicant was seeking an order for possession and enclosed a copy short assured tenancy agreement with an initial period from 18<sup>th</sup> May 2016 to 18 November 2016 and monthly thereafter, Form AT5, Section 33 notice and notice to quit with evidence of service, and section 11 notice.
2. The application was considered by a Legal Member of the Tribunal and further information was requested by email dated 22<sup>nd</sup> January 2024, as follows:

Before a decision can be made, we need you to provide us with the following:

- The section 33 Notice gives the termination date as 17th December 2023. Notices must be served to an ish date. Please confirm why you consider 17th December 2023 to be an ish date when the initial tenancy agreement ran until 18th November 2016 and monthly thereafter.
- The Notice to Quit does not appear to give a termination dare. Please confirm why you consider the notice to be competent.
- Please reserve the section 11 notice ticking the correct box, and provide a copy of the new notice, with proof of service, to the Tribunal.
- Please provide evidence of landlord registration in relation to the property
- Please provide a copy of the titles to confirm the Applicant's ownership.

Please reply to this office with the necessary information by 5 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received from the Applicant representative.

3. The application was considered further by a Legal Member of the Tribunal and a further opportunity to provide the requested information was provided to the Applicant representative by email dated 12<sup>th</sup> March 2024, requesting a response by 26<sup>th</sup> March 2024. No response was received.
4. The application was considered further by a Legal Member of the Tribunal and a further opportunity to provide the requested information was provided to the Applicant representative by letter dated 30<sup>th</sup> April 2024, requesting a response by 14<sup>th</sup> May 2024. No response was received.
5. The application was considered further by a Legal Member of the Tribunal on 30<sup>th</sup> May 2024.

### **Reasons for Decision**

6. 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;·*

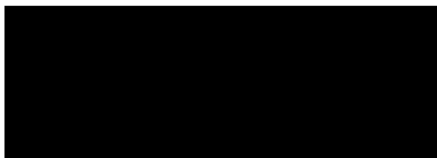
*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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.*

7. '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"*.
8. The notice to quit is invalid in respect that it fails to specify a date on which the tenant is required to leave the premises. Section 112(1) of the Rent (Scotland) Act 1984 provides that no notice to quit shall be valid unless it is given not less than four weeks before the date on which it is to take effect. As no date has been inserted into the notice, it is impossible to ascertain the date on which it is to take effect.
9. Section 33 of the Housing (Scotland) Act 1988 provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its end and tacit relocation is not operating. As no valid notice to quit has been served, the contractual tenancy continues by tacit relocation, and no order for possession could be granted by the Tribunal.
10. 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. 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**

**30<sup>th</sup> May 2024**  
**Date**