



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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")**

Case Reference: FTS/HPC/ EV/24/2466

12 Viewforth Square, Leven ("the property")

David McCathie, 21 Wall Street, Buckhaven ("the Applicant")

Robert Small, 12 Viewforth Square, Leven 2 ("the Respondent")

1. The Applicant seeks an order for possession of the property in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A tenancy agreement, Notice to Quit, and Section 33 Notice were lodged in support of the application. The Notice to Quit calls upon the Respondent to vacate the property on 20 May 2024.
2. The Tribunal issued requests for further information about the validity of the Notice to Quit on 18 June and 29 July 2024. The Applicant was also directed to provide evidence of service of the notices and a copy of the section 11 Notice which had been sent to the Local Authority. The Applicant was notified that if he failed to respond, the application might be rejected. Although he contacted the Tribunal to request a copy of the application paperwork, the Applicant failed to respond to the requests for information.

DECISION

3. The Legal Member 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.

4. After consideration of the application and documents lodged in support of same 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

- 5. '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".
- 6. The Applicant seeks recovery of possession of a short assured tenancy. The tenancy agreement lodged with the application states that the initial term of the tenancy is 29 April 2015 to 29 October 2015 with a provision that the tenancy will continue on a month to month basis after the initial term. It therefore appears that the tenancy has continued on this basis with an ish date on 29th of each month. The Notice to Quit calls upon the Respondent to vacate the property on 20 May 2024, which is not an ish. As a landlord cannot terminate the tenancy contract before the ish date, the Legal Member is satisfied that the Notice to quit is invalid.
- 7. Before an order for possession can be granted by the Tribunal in terms of Section 33 of the 1988 Act, the tenancy contract between the parties must be terminated by service of a valid Notice to Quit. This is to prevent tacit relocation operating, as required by Section 33(b). As the Applicant has not served the Respondent with a valid Notice to Quit, the application for an order for

possession cannot succeed.

8. As the Applicant cannot seek an order for possession without first terminating the tenancy contract, and as the Notice to Quit which has been lodged is invalid, the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis. The Legal Member also notes that the Applicant has failed to comply with Rule 66 of the Procedure Rules by failing to submit evidence that a valid section 11 notice has been sent to the Local Authority.

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.

J.Bonnar

Legal Member

17 September 2024