



**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/24/2990

40 Musselburgh Road, Dalkeith ("the property")

**Alistair and Margaret Campbell, 7 Shadepark Crescent, Dalkeith ("the
Applicants")**

Laura Jane Campbell, 40 Musselburgh Road, Dalkeith ("the Respondent")

1. The Applicants seek 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"). The application was submitted on 1 July 2024. A notice to leave was submitted with the application. In response to requests for further information and documents, the Applicants submitted a section 33 notice dated 29 June 2024 which said that the Applicants required possession of the property on 29 August 2024 and a Notice to quit which called upon the Respondent to vacate the property on 28 September 2024. The Applicants also submitted a copy of a tenancy agreement. The term of the tenancy is from 28 September 2012 to "ongoing".
2. In response to a further information request seeking clarification of the validity of the notices and the tenancy agreement, the Applicants responded stating that they had made errors but had taken advice on the notices and the tenancy agreement. They also said that they require to sell the property and explained that there are pressing personal circumstances.

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 from 28 September 2012 and is thereafter "ongoing". In terms of Section 32(1) of the 1988 Act, a tenancy can only be a short assured tenancy if it is for a term of "not less than six months". Although the tenancy can continue after the initial term for shorter periods, the tenancy is not a short assured tenancy if it does not have an initial term that meets this requirement. The tenancy agreement lodged with the application does not have a stipulated initial term, only a start date. As a result, the tenancy cannot be a short assured tenancy and the application under Rule 66 and Section 33 cannot succeed.

7. There are other defects in the application. Firstly, the application was submitted before the date specified in the Notice to quit had passed. In terms of Section 33 of the 1988 Act, a landlord can only seek an order for possession when the tenancy has reached its end and tacit relocation is not operating. The application is therefore premature. The second issue is that the date specified in the Section 33 notice is earlier than the date specified in the Notice to quit. In order to be valid, the section 33 notice must specify either the same date or a date after the date in the notice to quit since the landlord is not entitled to possession of the property until that date.
8. As the Applicant has failed to establish that the tenancy is a short assured tenancy or otherwise comply with the requirements of the 1988 Act, the Legal Member is satisfied that the application is frivolous and has no prospect of success. The application is rejected on that basis.

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.

Josephine Bonnar, Legal Member

5 November 2024