



**Decision 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/20/0078**

**Re: Property at 72 Craigielea Road, Renfrew, PA4 8NH (“the Property”)**

**Parties:**

**Mr George McCann, Mr Hugh McCann, Mrs Christine Bagnall, 21 Kilwynet Way, Gallowhill, Paisley; 14 Nethergreen Wynd, Renfrew, PA4 8HS; 68 Lyoncross Road, Glasgow, G53 5UP (“the Applicant”)**

**Ms Linsay Dickson, 72 Craigielea Road, Renfrew, PA4 8NH (“the Respondent”)**

1. On 10 January 2020, an application was received from the Applicant. 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 a Short Assured Tenancy. The ground for eviction specified was Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were enclosed with the application:-
  - (i) Short Assured Tenancy Agreement dated 2 November 2016;
  - (ii) Form AT5 ;
  - (iii) Form AT6;
  - (iv) Notice to Quit;
  - (v) Notice to Local Authority section 11 Notice
2. Following correspondence with the Tribunal, an amended application was submitted specifying Ground 11 in terms of the 1988 Act, which accorded with the ground specified in the AT6.
3. The Tenancy Agreement states that the initial period of the tenancy was from 7 November 2016 until 7 May 2017 and there was no provision to the effect that the tenancy, if not terminated on 7 May 2017 would thereafter renew on a monthly basis or

for any other period. Accordingly, the ish dates in terms of the lease are 7 May and 7 November in any given year.

4. The Notice to Quit and AT6 were both dated 11 November 2019 and specified that the tenancy would terminate on 7 January 2020. The Tribunal queried with the Applicant as to why the Applicant considered 7 January 2020 to be an ish date in terms of the lease when it appeared not to be. The Applicant responded that 7 January 2020 was not intended to represent an ish date arising from the tacit relocation of the lease but was rather the date that represented the end of the requisite notice period of 8 weeks.

## DECISION

5. I have considered the application 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.”*

6. After consideration of the application, 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**

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. 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.
8. The issue before me is whether recovery of possession of the property under Section 18 of the 1988 Act is competent. To recover possession of an assured tenancy, the Tribunal must be satisfied that the requirements of sections 16 and 18 of the 1988 Act are met. The contractual tenancy requires to be brought to an end on an ish date. This has not occurred here as the date of termination of the tenancy stipulated in the Notice to Quit and AT6 is 7 January 2020 which is not an ish date in terms of the lease. Nor do the terms of the tenancy make provision for the contractual tenancy to be brought to an end on the ground in question so the terms of Section 18(6) of the 1988 Act do not apply here.
9. An order for recovery of possession could not therefore be competently made by the Tribunal in respect of this application.
10. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met.

## **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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Nicola Weir

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**Legal Member/Chair**

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**Date** 17 February 2020