



**DECISION AND STATEMENT OF REASONS OF YVONNE MCKENNA, 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")**

Chamber Ref: FTS/HPC/EV/20/0308

Re: 7 Stewart Crescent, Newmains, North Lanarkshire, ML2 9DH ("the Property")

Parties:

**Ms. Mussarat Khalida, 20 Beltonfoor Way, Wishaw, North Lanarkshire, ML2 0GA
("the Applicant")**

**Miss Kimberley Yule, Ms. Elizabeth McWhinnie, 7 Stewart Crescent, Newmains,
North Lanarkshire, ML2 9DH; Burncrooks Farm, Hamilton ML3 9PS ("the
Respondent")**

Tribunal Member:

Yvonne McKenna (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined 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.**

Background

1. The application was received by the Tribunal under Rule 66 on 29TH January 2020. The application is for an order for possession upon termination of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:

- (i) A copy of the Tenancy Agreement in respect of the Property which commenced on 26th May 2016 and ended on 27th November 2016. It was dated and signed 26th May 2016.
 - (ii) Notice to the tenant in terms of section 33 (1) (d) of the Housing Scotland Act 1988 dated 5th November 2019.
 - (iii) Copy notice given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 and intimation of same.
 - (iv) Post Office certificate of Posting of the Notice dated 5th November 2019.
 - (v) AT5 dated 26th May 2016
2. On 11th February 2020 the application was considered by the Tribunal and a request for further information issued . The Applicant was requested to provide the following :
- The Notice to Quit does not appear to be valid as the date upon which the Respondent is called upon to vacate the property does not coincide with an ish date of the tenancy. Please confirm the basis upon which the tribunal can proceed to consider the application.

The Applicant was requested to provide the information by 25th February 2020 failing which the application may be rejected.

3. The Applicant responded to the Tribunal on 11th February 2020 stating;

“the notice to quit date does not have to coincide with the tenancy date as after the initial 6 months of the tenancy had passed it reverted to just me having to give 2 months notice as stated in the tenancy. This I have done so.”

DECISION

4. I considered the application in terms of Rule 8 of the 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."

5. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I consider the application to be frivolous or vexatious in terms of Rule 8 (1)(a) of the Procedural Rules.

REASONS FOR DECISION

6. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

7. The Applicant has provided a Notice to Quit which purports to terminate the tenancy as at the 26th January 2020. Clause 1.7 of the Tenancy Agreement between the parties provides that the initial term of the tenancy is from 26th May 2016 to 27th November 2016. Thereafter the tenancy agreement provides for a continuation on a monthly basis.
8. The Notice to Quit is therefore invalid as the 26th January 2020 is not a valid date. Accordingly I determine that the application has no prospect of success on the basis that the contractual tenancy between the parties continued and therefore the provisions of section 33 of the Housing (Scotland) Act could not be met. The application could therefore be held to be futile and misconceived as a result. Accordingly having regard to the aforementioned test in R V North West Suffolk(Mildenhall) Magistrates Court, the Tribunal concluded that the application was frivolous and rejected it under Rule 8 (1)(a) of the Procedure Regulations.
9. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.

Yvonne McKenna
Legal Member
16th August 2019