



**DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE LEGAL MEMBER  
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER  
PRESIDENT**

Under Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

17A West Main Street, Uphall, Broxburn, EH52 5RY

**Case Reference: FTS/HPC/CV/20/0315**

**Bruce Johnston, 19 Curran Crescent, Broxburn, West Lothian, EH 52 5RY ("the  
Applicant")**

**And**

**Mr Graham Lyndsay, 17A West Main Street, Uphall, Broxburn, EH52 5RY ("the  
Respondent")**

**BACKGROUND**

1. On 30 January 2020 the Applicant's Representative lodged an application for eviction of the Respondent from the property at 17A West Main Street, Uphall, Broxburn, EH52 5RY ('the Property'). The application was made in terms of section 18 of the Housing (Scotland) Act 1988 on the basis of non-payment of rent. It was originally made under Rule 109 of the Procedural Rules and was later proposed to be changed to Rule 65.

**DECISION**

2. For the reasons given below this application is rejected.

## REASONS FOR DECISION

3. 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; . . .*

*(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. For the purposes of this rule the word 'frivolous' does not have its ordinary day to day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.
5. The application was made under section 18 and ground 8 of schedule 5 of the Housing (Scotland) Act 1988. Section 18 requires the Tribunal to be satisfied that the statutory requirements for recovery of possession have been satisfied.
6. The first requirement is that in terms of section 18(6) of the 1988 Act –
- (a) The ground for possession must be ground 2 or ground 8 in Part I of schedule 5 to the [1988 Act] or any of the grounds in Part II of that schedule other than grounds 9, 10, or 17; and
- (b) The terms of the tenancy make provision for it to be brought to an end on the

- ground in question,  
unless the tenancy is a statutory assured tenancy.
7. The Tribunal is advised that no written tenancy agreement was entered into between the Parties and that they were introduced through a mutual friend. That it commenced on or about 23 June 2017.
  8. It is plain therefore that there are no terms of the tenancy on this point to make provision for it to be brought to an end on the basis of ground 8 of schedule 5 to the 1988 Act.
  9. Furthermore there is nothing to indicate that the tenancy has become a statutory assured tenancy. The tenancy duration is silent therefore could be assumed by default that the term is one year, subject to any further representations. A Notice to Quit has been produced which is dated 17 September 2019 and requires the tenant to leave by 23 November 2019. That is less than one year. The Notice is invalid. No evidence of service has been produced along with the Application in addition.
  10. For it to become a statutory assured tenancy a valid notice to quit coinciding with an "ish" or expiry date of the tenancy under tacit relocation would have been required and the tenant to have remained in possession after that date. It is plain that no such notice has been given.
  11. In these circumstances, I can conclude that the pre-requisite of section 18(6)(b) cannot be met and that the current application is misconceived and doomed to fail.
  12. In addition Form AT6 is produced. It relies on Ground 8, as above; in Part 2 it does not fully state the Ground as set out in Schedule 5 to the Housing (Scotland) Act 1988. It refers to Ground 11 in Part 3. Any Ground relied on should have been narrated in full at Part 2 and more than one Ground could have been inserted there. Part 3 is intended to state particulars of how the grounds have arisen, with some detail given to allow for it to be understood by the party receiving it.
  13. Information had been requested and an extension of time had been given to 3 March 2020. The information which had belatedly been produced was submitted on 16 March 2020. One of those documents was a section 11 notice under the Homelessness etc. (Scotland) Act 2003. The Notice appears to have the correct legislation under which it is to be applied but the intimation letter to the relevant local authority does not.
  14. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' within the legal meaning of Rule 8(1)(a) of the Procedural Rules and that good reason exists for it to be rejected under Rule 8(1)(c) of the Procedural Rules.

### **What you should do now**

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.

Susan Christie  
Legal Member acting under delegated powers  
18 March 2020