Housing and Property Chamber
First-tier Tribunal for Scotland

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")

in connection with

57 Nettlehill Drive, Uphall Station, Livingston, EH54 5PR6 ("the property")

Case Reference: FTS/HPC/EV/19/0337

Andrew Neil, 97 Langton View, East Calder, West Lothian, EH53 0RB ("the Applicant")

Danielle Deegan, 57 Nettlehill Drive, Uphall Station, Livingston, EH54 5PR ("the Respondent")

1. By application dated 27 January 2019 the Applicant sought an order for recovery of possession of the property in terms of Rule 65 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement dated 15 October 2008, AT6 Notice dated 23 November 2018, Royal Mail track and trace indicating delivery of an item on 24 November 2018 and a letter to West Lothian Council in terms of Section 19A of the Housing (Scotland) Act 1988 ("the Act"). The application states that the Applicant seeks an order for possession of the property on grounds 8, 11 and 12 of Schedule 5 of the Act.

2. A request for further information was issued to the Applicant on 19 February 2019. In terms of the request the Applicant was asked to provide evidence that a Notice to Quit had been served as the AT6 submitted was not sufficient basis for the application to proceed in terms of Section 18(6) of the Act where the tenancy agreement did not narrate in full the grounds for recovery of

possession.

3. The Applicant responded to the request for further information by providing a copy Notice to Quit dated 23 November 2018 and stated that this had been served at the same time as the AT6 Notice already lodged. The copy Notice to Quit states that the tenant is required to vacate the property on 14 December 2018.

DECISION

4. 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."

5. **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

6. '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".* It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.

7. The application lodged with the Tribunal seeks recovery of possession of an assured tenancy on the basis of grounds 8, 11 and 12 of Schedule 5 of the Act. The Applicant has not served a valid Notice to Quit on the Respondent terminating the tenancy contract. The Notice submitted states that the date for removal of the tenant is 14 December 2018. The Applicant states that it was served on 24 November 2018. Section 112(1) of the Rent (Scotland) Act 1984 states " No notice by a landlord or a tenant to quit any premises let as a dwellinghouse shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect." The Applicants Notice to Quit was served on the Respondent only 20 days before the date upon which it is to take effect. Furthermore, it is a legal requirement that the Notice to Quit must take effect on an ish date. The term of the tenancy stated in the agreement which has been lodged is " both dates inclusive from 15/10/08 to 14/4/09" There is no specific provision for the tenancy continuing beyond that date. It appears therefore that it was allowed to continue by tacit relocation for further 6 monthly periods with ish dates on the 14th of October and April of each year. The Notice to Quit served on the Respondent purports to terminate the tenancy contract on 14 December 2014, which is not an ish date of the tenancy. As a result the Notice is invalid and the tenancy contract has not been terminated.

8. The Legal Member proceeded to consider the AT6 Notice which has been lodged with the application and whether the application can be considered in terms of Section 18(6) of the Act. This states "The first tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b) **the terms of the tenancy make provision for it to be brought to an end on the ground in question**". The copy tenancy agreement which is lodged with the application does not specify the grounds for recovery of possession upon which the Applicant seeks to rely. In Royal bank of Scotland v Boyle 1999 HousLR it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, "(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate". The Legal Member notes that while there is a reference to schedule 5 in the tenancy agreement that the "essential ingredients" of the grounds have not been narrated. As a result the Applicant has failed to meet the requirements of section 18(6) of the Act and cannot therefore proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation.

9. The Legal member therefore concludes that the application is frivolous, misconceived 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
1 March 2019