

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

CORRAN, ORMSARY, LOCHGILPHEAD, ARGYLL PA31 8NZ ("the property")

Case Reference: FTS/HPC/EV/19/0827

JOHN LITHGOW ("the applicant")

AMI HARRIS AND PHILIP CARRUTHERS ("the respondents")

1. On 7 March 2019 an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules being an application for repossession on termination of a short assured tenancy under S 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-
Copy short assured tenancy commencing 1 July 2017 expiry date 1 January 2018 and month to month thereafter, copy form AT5, copy notice to quit dated 11 January 2019 for 28 February 2019, copy S33 notice dated 11 January 2019 for 28 February 2019, copy signed for recorded delivery service dated 11 January 2019, copy S 11 Notice

By letter 25 March 2019 the Tribunal requested further information from the applicant regarding the explanation of the termination date and service of a Notice to Quit on the second named Respondent. No reply has been received by 9 May 2019.

DECISION

2. 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."

3. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that the application is frivolous or vexatious within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

4. The Tribunal has 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.
5. As pointed out in previous correspondence, the ish date of the tenancy is stated as the first of any month following from the month to month continuation of the tenancy after the original ish date stated as 1 January 2018. The Notice to Quit gives as the date of expiry 28 February 2019 rather than an ish date of the tenancy. This was raised with the Applicant in the letter of 25 March 2019 and the Applicant has not replied to said letter and not provide any representation as to why the Notice to Quit could be considered valid.
6. The application is made on the basis that the tenancy is a Short Assured Tenancy and the tenant had been issued with a notice to quit and S 33 notice and the tenant has failed to vacate the property at the ish date. In terms of S 33 (2) the notice period for a S 33 Notice is 2 months. The S 33 Notice was served on 11 January 2019 for 28 February 2019 and thus the required period of 2 month has not been given.

7. Furthermore no explanation regarding service of the Notice to Quit and S 33 Notice was provided by the Applicant following the Tribunal's letter of 25 March 2019. The Applicant has not cooperated with the Tribunal by providing further information.

8. Accordingly, for these reasons, this application is rejected upon the basis that the application is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules as it has no prospect of success.

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.

Mrs Petra Hennig-McFatridge

Petra Hennig McFatridge
Legal Member
9 May 2019