Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of Fiona Watson, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/19/0896

Re: Property at 14 Montrane Avenue, Cupar, Fife, KY15 5DN ("the Property")

Parties:

Mr James Honeyman ("the Applicant")

Mr Robert Bruce, Ms Leanne Graham ("the Respondent")

1. On 19 March 2019 an application was received from the applicant. The application was made under Rule 66 of the Rules being an application by a landlord for possession on termination of a property let under a Short Assured Tenancy and in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").

2. The following documents were enclosed with the application:

   (i) Copy Short Assured Tenancy Agreement
   (ii) Copy Form AT5
   (iii) Copy notice served under s33(1)(d) of the 1988 Act
   (iv) Copy letter dated 17 march 2019 and referred to as "Notice to Quit."
   (v) Copy notification to Fife Council under s11 of the Homelessness etc. (Scotland) Act 2003

3. A request for further information was sent to the Applicant by letter dated 1 April 2019. On 2 April 2019 the Applicant (by email) responded to each of the points raised by the Tribunal and further provided the following additional documents:

   (i) Copy text messages between the applicant and Respondent between 26 October 2018 and 4 March 2019

Decision

4. I considered the Application in terms of section 33 of the 1988 Act and Rule 8 of the Rules.

   Rule 8 states:-

   "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 together with the documents and further information provided by the Applicant, 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 Rules.

REASONS FOR DECISION

6. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Midlenhall) 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 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.

7. Section 33 of the 1988 Act states as follows:

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

(a)that the short assured tenancy has reached its finish;

(b)that tacit relocation is not operating; and

(c) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

8. I considered the notice issued in terms of section 33 of the 1988 Act. The said notice lodged with the application states within it as follows:

"I require vacant possession as at 18/05/2019. The tenancy will reach its termination date as at that date and I now give you notice that you are required to remove from the property on or before 18/05/2019"

I consider that in terms of the said notice served under s33 of the 1988 Act, the Landlord has given the Tenant until 18 May 2019 to remove from the Property. This Application is accordingly premature.

9. I also considered the letter lodged with the application dated 17 March 2019 and which is referred to as a "Notice to Quit." I was not satisfied that this was a competent Notice to Quit for a number of reasons:

   (a) A Notice to Quit must specify a date of removal from the Property which coincides with the ish date of the tenancy agreement. The Short Assured Tenancy Agreement lodged with the application had a start date of 1 November 2013 and end date of 31 October 2014. It is then expressly stated at Clause 3 that "*if the agreement is not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until ended by either party.*" Accordingly, the tenancy agreement can be deemed to be running to the 31st of each month after the specified end date. Any Notice to Quit issued must specify a date for removal tying in with that ish date. This Notice to Quit does not do so and is accordingly incompetent on that basis;

   (b) Any Notice to Quit must comply with the terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. In terms of the said Regulations, where a notice to quit is given by a landlord to terminate an assured tenancy under the 1988 Act it must contain the information set out in the Schedule to the said Regulations. The letter purporting to be a Notice to Quit lodged with the application contains no such information and accordingly is incompetent on that basis;

   (c) The applicant has confirmed that the notice to quit was hand delivered to the Property by the applicant. I considered the decision of *Govan Housing Association v Kane 2003 Hous LR 125*, which was also referred to in the case of *City of Edinburgh Council v Martin Smith [2016] SC EDIN 42* in relation to the validity of hand delivery of a notice to quit. *Govan* gives authority that hand delivery to the Property of a notice to quit by anyone other than Sheriff Officer is not competent service. Accordingly I do not consider that this notice has been competently served.

   (d) The notice to quit states that "*in terms of this Agreement please accept this letter as Notice to Quit, this giving two month's notice in which to vacate the property on 18 May 2019.*" Further to my comments on the same point in relation to the section 33 notice above, I consider that the landlord has given the tenant until 18 May 2019 to remove from the Property and therefore even if it could be held that the notice to quit is competent, this Application is accordingly premature in any event.

Section 33(1)(b) requires the applicant to satisfy the Tribunal *"that tacit relocation is not operating."* A competent Notice to Quit must be issued to prevent tacit relocation from operating. Accordingly, given the competency issues detailed above, I am not satisfied that section 33(1)(b) has been complied with.

10. Accordingly, for the reasons outlined above I consider that the application for an order for repossession should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the 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,

Ms Fiona Watson

Fiona Watson
Legal Member
15 April 2019