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 Procedure Rules")

in connection with

23 Alder Crescent, East Kilbride ("the property")

Case Reference: FTS/HPC/EV/21/1260

Stephen Lorimer, 37 Kincardine Place, East Kilbride ("the Applicant")

Stephen Angell, 23 Alder Crescent, East Kilbride ("the Respondent")

1. By application received on 26 May 2021, the Applicant seeks an order for possession of the property in terms of Rule 66 of the Procedure Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged documents in support of the application including copy tenancy agreement, AT5 Notice, Notice in terms of Section 33 of the Housing (Scotland) Act 1988 and Notice to Quit. The Notices stipulate that the Respondent is to vacate the property on 23 May 2021.

2. The Tribunal issued a request for further information to the Applicant. The Applicant was asked to explain the basis upon which the Tribunal could consider the application as the Notice to Quit appeared to be invalid. The Applicant was advised that the date specified in the Notice did not appear to coincide with an ish of the tenancy and did not contain the prescribed information required in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ("the 1988 Regulations"). In the response, the Applicant stated that the date specified in the Notice

appeared to be incorrect but referred the Tribunal to the Coronavirus (Scotland) Act 2020, Schedule 1, paragraph 10 which relates to errors in notices. With regard to the prescribed information, the Applicant stated that the notice did contain the first and third pieces of information specified in the 1988 Regulations, although different (and more helpful) language had been used. The second piece of information had not been provided, but was irrelevant as the Applicant had proceeded to seek possession of the property. As a result, the Respondent has suffered no detriment. The Applicant asked the Tribunal to accept the application as any delay would be detrimental to the Applicant.

DECISION

3. 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."

4. **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

5. '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.

6. The application lodged with the Tribunal seeks an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the 1988 Act. Section 33 states(1) states " Without prejudice to any right of a 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 ish, (b) that tacit relocation is not operating and (d) 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." In order to comply with subsections (a) and (b), a landlord must serve a valid Notice to Quit which terminates the tenancy contract at the ish.

7. The term of the tenancy stipulated in the tenancy agreement which has been lodged by the Applicant, is 19 August 2017 to 18 February 2018. The agreement states that if the tenancy is not brought to an end by either party on the termination date it will continue on a two monthly basis. It therefore appears that the ish dates (after the initial term) would be 18 April, 18 June, 18 August,

18 October, 18 December and 18 February each year. The Notice to Quit which was served purports to terminate the tenancy on 23 May 2021, which is not an ish. The Legal Member is not persuaded by the Applicant's argument that Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 applies. This provision states that a Notice is not invalid as a result of failure to take "proper account" of the changes introduced by paragraphs 1 to 9 of the Schedule, namely the longer periods of notice which now apply. The provision does not validate notices which contain other defects unrelated to the legislation.

8. Section 112 of the Rent (Scotland) Act 1984 ("the 1984 Act") states, "No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) 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."** Section 2 of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ("the 1988 Regulations") states "**Where a notice to quit is given by a landlord to terminate an assured tenancy under the Housing (Scotland) Act 1988 that notice shall contain the information set out in the Schedule to these Regulations."** The Schedule states "INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT. 1. Even after the Notice to Quit has run out, before the tenant can be lawfully evicted, the landlord must get an order for possession from the court." 2. If a landlord issues a notice to quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter. 3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the legal aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre."

9. The Applicant argues that the information provided in the Notice to Quit served on the Respondent is sufficient. His explanation is that it does provide parts 1 and 3 of the schedule, and that part 2 is irrelevant because he did proceed to seek an order for possession. The Legal Member is not persuaded by this argument. Both Section 112 of the 1984 Act and the provisions of the 1988 Regulations make it clear that the information in the specified format is to be included in the Notice to Quit. Furthermore, even if the Applicant's notice did provide similar information to that specified in parts 1 and 3, there is no provision for a landlord to dispense with any part of the prescribed information on the grounds that it was not going to apply.

10. The Legal Member is therefore satisfied that the Notice to Quit is invalid. Before raising proceedings for recovery of the property in terms of Section 33 of the 1988 Act, a landlord must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not terminate the contractual tenancy. As a result, the Applicant has failed to comply with the requirements of Section 33 of the 1988 Act. 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.