



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/EV/20/1346**

**Re: 30 Windsor Drive, Penciuik, EH26 8DT ("the Property")**

**Parties:**

**Mrs Carole Rorrison (Formerly McLaughlan) (Applicant)**

**Ms Tiffany Gibb (Respondent)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the Tribunal originally under Rule 66 on 15 June 2020. The grounds for possession/eviction were stated to be "*Property to be sold*" and termination of a Short Assured Tenancy (**SAT**) had been highlighted on the application form (Rule 66). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 6 June 2014 until 7 December 2014 continuing thereafter month to month;
- (ii) AT5 dated 6 June 2014;
- (iii) AT6 dated 29 February 2020 specifying the ground for possession as being termination of the SAT;
- (iv) Notice to Quit dated 29 February 2020 and specifying 10 May 2020 as the date to quit;
- (v) Section 33 Notice dated 29 February 2020 specifying 10 May 2020 as the date of termination of the tenancy;

- (vi) Estate Agency Package;
- (vii) Royal Mail Track and Trace;
- (viii) Section 11 Notice to local authority;
- (ix) Email correspondence between the Parties.

2. The application was considered by the Tribunal and further information was requested by letter of 29 June 2020. In particular the Applicant was requested to (amongst others) comment on the validity of the Notice to Quit and as the date specified did not coincide with an *ish* or end date of the tenancy. The Applicant responded by email of 12 July 2020 stating that she had given 2 months' notice as required.

### Reasons for Decision

3. The Tribunal 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;*
- (c) they have good reason to believe that it would not be appropriate to accept 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. '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*".

5. The application seeks to proceed under Rule 66. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. The *ish* date of the tenancy is the 7th day of every month. The Notice to Quit and section 33 Notice both stated 10 May 2020 as the *ish* date which was patently wrong. The tenancy was not validly terminated and tacit relocation continues to operate.

6. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

### Right of Appeal

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

**Alan Strain**

**Legal Member/Chair: A.Strain**

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**DATE: 5 August 2020**

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