



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

Flat 2/2, 73 Waverley Gardens, Shawlands, Glasgow G41 2DP

Case Reference: FTS/HPC/EV/19/2677

USMAN HUSSAIN, 432 Shields Road, Pollokshields, Glasgow G41 1NS ("the Applicant")

Represented by David Hutchison, Dallas McMillan, 70 West Regent Street, Glasgow G2 2QZ

**(1) TOM FLAY; and (2) RYAN LASKEY, both at, Flat 2/2, 73 Waverley Gardens, Shawlands,
Glasgow G41 2DP ("the Respondents")**

BACKGROUND

1. On 26 August 2019 the Applicant's Representative lodged an application for eviction of the Respondents from the property Flat 2/2, 73 Waverley Gardens, Shawlands, Glasgow G41 2DP ('the property'). The application was made in terms of section 18 of the Housing (Scotland) Act 1988 on the basis of non-payment of rent.

DECISION

2. For the reasons given below this application is rejected.

REASONS FOR DECISION

3. 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; . . .

(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. For the purposes of this rule the word 'frivolous' does not have its ordinary day to day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"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 was made under section 18 and ground 8 of schedule 5 of the Housing (Scotland) Act 1988. Section 18 requires the Tribunal to be satisfied that the statutory requirements for recovery of possession have been satisfied.

6. The first requirement is that in terms of section 18(6) of the 1988 Act –
 - (a) The ground for possession must be ground 2 or ground 8 in Part I of schedule 5 to the [1988 Act] or any of the grounds in Part II of that schedule other than grounds 9, 10, or 17; and
 - (b) The terms of the tenancy make provision for it to be brought to an end on the ground in question,
unless the tenancy is a statutory assured tenancy.
7. It is plain from the Tenancy Agreement dated 1 August 2017 (so far as legible) that the terms of the tenancy (Lease) do not make provision for it to be brought to an end on the basis of ground 8 of schedule 5 to the 1988 Act. This ground is not set out in the Lease nor is it even referred to. The provisions of section 1.1 clause 1 of the Lease are totally inadequate in that regard. They refer to provisions of English law which cannot apply to the Tenancy Agreement.
8. Furthermore there is nothing to indicate that the tenancy has become a statutory assured tenancy. The tenancy was due to run for 6 months to 1 February 2018 in terms of the Lease and for month to month thereafter under section 1.1 clause 4. For it to become a statutory assured tenancy a valid notice to quit on the first day of a month (the “ish” or expiry date of the tenancy under tacit relocation (automatic silent re-lease)) would have been required and the tenant to have remained in possession after that date. It is plain that no such notice has been given. The notice that there is requires the respondent to quit on 9 August 2019. Such notice is clearly premature and invalid.
9. In these circumstances I take the view that the pre-requisite of section 18(6)(b) cannot be met and that the current application is misconceived and doomed to fail.
10. In addition by letters dated 20 September 2019 and 27 November 2019 the Applicant’s representative was asked to provide representations to the Tribunal on why the notice to quit might be thought to be valid, how section 18(6) might be satisfied, and whether

the AT6 form under section 19 of the Act was valid in the light of it not mentioning ground 8 in full or the amount of rent said to be due and unpaid. These are matters going to the heart of the application. The Tribunal has not received any representations from the Applicant's representative. The representative was warned that failure to respond might result in the rejection of the application. In the light of this failure to respond I have good reason to believe that it would not be appropriate to accept this application.

11. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' within the legal meaning of Rule 8(1)(a) of the Procedural Rules and that good reason exists for it to be rejected under Rule 8(1)(c) of the Procedural Rules.

What you should do now

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.

David Bartos
Legal Member acting under delegated powers
18 December 2019