



**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 Rules")

in connection with

27 Highfield Drive, Stevenson, KA20 3AU

**Case Reference: FTS/HPC/EV/18/2811**

**Michael Cowan, 37 Sharphill Road, Saltcoats, KA21 5NW ("the Applicant")**

**Marita Cairney, 27 Highfield Drive, Stevenson, KA20 3AU ("the Respondent")**

1. On 19 October 2018 an application was received from the Applicant via his solicitor. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an assured tenancy. Attachments were provided with the application form to support the application and these attachments included a copy tenancy agreement (unsigned) , a copy rent statement, copy bank statement, copy AT6 Notice and Notice to Quit with Royal Mail proof of delivery and copy section 11 Notice to North Ayrshire Council.. The application states that recovery of possession is sought on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 ("the Act").
2. A request for further information was issued to the Applicant's solicitor on 16 November, seeking clarification of the Notice to Quit which had been lodged as the date to remove does not correspond with an ish date of the tenancy. On 16 November 2018 an email was received from the solicitor. The solicitor advised that the tenancy is not a short assured tenancy as no AT5 Notice was served. He further advised that as the application is a recovery of

possession of an assured tenancy on the basis of rent arrears, the Applicant did not require to serve a Notice to Quit which specified an ish date. He stated that that a valid AT6 Notice had been served.

## 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, the attachments and correspondence from the Applicant’s solicitor, 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 recovery of possession of an assured tenancy on the basis of rent arrears (grounds 8, 11 and 12 of schedule 35 of the Act). The Applicant has not served a valid Notice to Quit on the Respondent terminating the tenancy contract. The Applicant seeks to rely on Section 18(6) of the Act which states "The first tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b) **the terms of the tenancy make provision for it to be brought to an end on the ground in question**". The copy tenancy agreement which is lodged with the application does not specify the grounds for recovery of possession upon which the Applicant seeks to rely. As a result the Applicant has failed to meet the requirements of section 18(6) of the Act and cannot therefore proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged does not specify a date to remove which coincides with an end of the tenancy. The Notice is therefore invalid and does not bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation.
  
7. 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.



7 December 2018