



**Decision with Statement of Reasons of H Forbes, 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/21/2821**

**Re: 249 Cedar Road, Abronhill, Cumbernauld, G67 3AT ("the Property")**

**Parties:**

**Jason Kennedy ("the Applicant")**

**Brian Hainan ("the Respondent")**

**Tribunal Member:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed 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 under Rule 65 on 12<sup>th</sup> November 2021. The Applicant included a copy of a tenancy agreement, Form AT5, incomplete Notice to Quit, section 11 notice and evidence of posting.
2. The application was considered by the Tribunal and further information was requested from the Applicant's representative by letter dated 8<sup>th</sup> December 2021, as follows:
  1. Please provide written authorisation by the applicant to the agent.
  2. Please provide evidence of valid service of the notices on the respondent. In terms of S 54 of the Housing (Scotland) Act 1988 this must have been by personal delivery or sending by recorded delivery.

3. It appears that the Notice to Quit was not issued to an ish date of the tenancy. The tenancy seems to have continued from the initial ish date of 30.12.2017 by tacit relocation for 6 months at a time. Thus the ish dates possible appear to be 30.6. and 30.12. of a year and thus 30.9.2021 does not appear to be a valid ish day and the Notice to Quit thus appears not to be valid. Please make legal representations on the matter

4. Please provide a full copy of the Notice to Quit. The copy submitted does not include item 3 of the requirements stated as part of the information given to tenants in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended and item 1 appears to be taken from a version of said regulations no longer in force. Please make legal representations on the matter.

5. Please clarify on what basis the application is made. If it is made in terms of S33 of the Housing (Scotland) Act 1988 the appropriate and corresponding rule would be rule 66. You made the application in terms of rule 65. If it is to be made in terms of rule 65 please make legal representations on the Supported by the Scottish Courts and Tribunals Service [www.scotcourtribunals.gov.uk](http://www.scotcourtribunals.gov.uk) application of said rule and provide the AT6 document and proof of service of same.

The Applicant's representative was given until 22<sup>nd</sup> December 2021 to respond, failing which the application may be rejected.

3. No response was received from the Applicant's representative.
4. The application was considered by a legal member and a reminder of the outstanding request for information was sent out on 13<sup>th</sup> January 2022, requiring a response by 27<sup>th</sup> January 2022, failing which the application may be rejected.
5. No response was received from the Applicant's representative.
6. The application was considered further on 14<sup>th</sup> February 2022.

### **Reasons for Decision**

7. 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."*

8. '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"*.
9. The basis on which this application has been made is not clear. The documentation provided is incomplete. There is no evidence of valid service of the Notice to Quit on the Respondent. The Notice to Quit was not issued to a valid ish date of the tenancy. No Form AT6 was provided. In all the circumstances, and in the absence of the requested legal representations, the Tribunal cannot consider the case.
10. 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.**

Helen Forbes

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**Legal Member/Chair**

**14<sup>th</sup> February 2022**

**Date**