



**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/18/3420**

**Re: 2 Balmakin Farmhouse, Colinsburgh, Leven, KY9 1JS ("the Property")**

**Parties:**

**Balcarres Estate, Balcarres Estate Office, Colinsburgh, Leven KY9 1HJ ("the Applicant")**

**Mr David Cooper, 2 Balmakin Farmhouse, Colinsburgh, Leven, KY9 1JS ("the 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 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 66 on 14 December 2018. The grounds for possession/eviction were termination of a Short Assured Tenancy. The following documents were enclosed with the application:
  - (i) Tenancy Agreement dated 6 and 9 July 2001 in respect of the Property which stated it was for a period from 9 July 2001 until 8 July 2002;
  - (ii) Form AT5 dated 6 July 2001;

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- (iii) Notice to Quit addressed to the Respondent dated 8 May 2018 which specified 9 July 2018 as the date by which the Respondent had to quit;
- (iv) Section 33 Notice undated which specified the termination date of the tenancy as 9 July 2018;
- (v) Section 11 Notice;
- (vi) Royal Mail recorded delivery "Proof of Delivery".

### Reasons for Decision

2. 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."*

3. '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*".
4. The application seeks to proceed under Rule 66 and section 33 of the Housing (Scotland) Act 1988. In order to do so the tenancy must have been validly terminated and tacit relocation not operating. The Notice to Quit that has been served upon the Respondent purports to terminate the tenancy as at 9 July 2018. In terms of the tenancy agreement the "ish" date is the 8th day of each month. The Notice to Quit is defective and accordingly has not terminated the tenancy which continues by tacit relocation.
5. As the tenancy has not been validly terminated 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

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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.

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Legal Member/Chair

*7 March 2019*  
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Date