

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS BY THE 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 Procedural Rules")

in connection with

726 Old Edinburgh Road, Uddingston, G71 6LB

Case Reference: FTS/HPC/EV/19/3590

The Parties:-

Mr William Foster, 12 Strathclyde Road, Motherwell, ML1 3EE ("the Applicant")

Mr David McCallum, 726 Old Edinburgh Road, Uddingston, G71 6LB ("the Respondent")

1. By application dated 5th November 2019 the Applicant sought an order for repossession of the property under Rule 66 of the Procedural Rules, on the basis that the tenancy was a Short Assured Tenancy that had been terminated. The application was accompanied by a letter which explained that the Applicant did not have copies of the relevant paperwork served upon the Respondent.
2. On 11th November 2019 the Tribunal wrote to the Applicant requesting that he provide the following information:-
 - (i) The tenancy agreement (if available) or, if not available, as much information about the tenancy as the Applicant could give;
 - (ii) The notice by the landlord that the tenancy is a short assured tenancy (AT5);
 - (iii) Notice to Quit;
 - (iv) The notice given to the Respondent under section 33(1)(d) of the 1988 Act.
 - (v) A copy of the notice given to the local authority by the landlord under

section 11 of the Homelessness (Scotland) Act 2003 (if applicable) together with evidence of service on the local authority.

As at the date of this decision the Tribunal has received no further correspondence from the Applicant.

DECISION

3. The Legal Member determined to reject the application on the basis that she had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

4. The Legal Member considered the application paperwork and the accompanying letter from the Applicant.
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. 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*". It is that definition which the Legal Member had to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
6. An application under Rule 66 must be accompanied by certain documentation, the reason being that the Tribunal is required to satisfy itself that the provisions of section 33 of the 1988 Act which permit a landlord to seek possession at the end of a Short Assured Tenancy have been met. In particular, an application under Rule 66 must include the following documentation:-
 - (i) A copy of the notice served upon the tenant that the tenancy is a Short Assured Tenancy, otherwise known as the Form AT5;
 - (ii) A copy of the notice to quit, terminating the contractual tenancy between the parties; and
 - (iii) A copy of the notice to the tenant under section 33(1)(d) confirming that the landlord seeks repossession of the property.

In this case the Applicant had indicated in his accompanying letter to the Tribunal that the notices served on the Respondent were not available. He cannot therefore satisfy the requirements of Rule 66.

7. The Legal Member therefore had no option but to conclude that the application was fundamentally flawed and could not proceed in its current form. In the absence of the required documentation, the Tribunal would be unable to make any findings under section 33 of the 1988 Act.

8. The Legal Member therefore determined that the application had no prospect of success on the basis that the Applicant could not comply with requirements of Rule 66 and consequently the provisions of section 33. The application could therefore be held to be futile and misconceived as a result. Accordingly having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Tribunal concluded that the application was frivolous and rejected it under Rule 8(1)(a) of the Procedure Regulations.

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.

Ruth O'Hare



Ruth O'Hare
Legal Member