



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.**

In respect of application by Clachan Residential in terms of Rule 66 of the Rules.

**Case reference FTS/HPC/EV/19/3843**

At Glasgow on the 9 December 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules i

1. This is an application on behalf of Clachan Residential, for recovery of possession of the property at 172 Laburnum Road Viewpark Glasgow G71 5DB in terms of Rule 66 of the rules.
2. The application was made on behalf of Clachan Residential by Prospect Property Factors Ltd on 3 December 2019.
3. The application was accompanied by the following:-
  1. Short assured tenancy agreement for let of the property for 6 months from 23 December 2016 until 23 June 2017.
  2. Mandate signed by Mr Martin Eckersall owner of the property, authorising Prospect Properties to act on his behalf.
  3. AT5 form dated 23 December 2019.
  4. Notice to quit dated 27 November 2019 with an ish date of 28 January 2020.
  5. S11 intimation on local authority.
  6. Rent arrears schedule.
  7. AT6 dated 21 December 2018
  8. S33 notice dated 28 November 2018 with an ish date of 28 January 2020.
  9. Sheriff Officer’s execution of service of items 4 and 7.

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4. There is a fundamental problem with this application which relates to the notice to quit. I have considered the notice to quit carefully and considered whether the notice to quit meets the legal requirements of such a notice. I consider that the notice to quit issued here is invalid. The notice to quit does not tie in with the 'ish' date provided for in the tenancy agreement. The agreement provides for an initial term of 6 months from 23/12/16 to 23/06/17. There is no provision for month to month after the expiry of the initial period. The ish must therefore be on 23 December or 23 June. The notice to quit lodged gives an ish date of 28 January 2020. Stalker in Evictions in Scotland at page 35 states:

*If the date stated on the notice to quit is earlier than the ish, the notice is ineffective; the landlord cannot call on the tenant to leave before the tenant is contractually bound to do so. If the date stated on the notice is later than the ish date the notice is similarly ineffective to prevent tacit relocation occurring at the ish.*

I consider the notice to quit lodged to be ineffective and invalid. The notice to quit does not tie in with the ish date and it does not therefore prevent tacit relation from taking place. An application in terms of s33 of the Housing (Scotland) Act 1988 cannot therefore succeed as one of the statutory requirements of an application in terms of s33 of the Act is that the tenancy has been brought to an end and tacit relocation is not operating.

5. It could be open to the applicant to proceed in terms of s18(6) of the Housing (Scotland) Act 1988, 'the Act' without terminating the contract by amending the application to rule 65 of the rules. An AT6 has been lodged with the rule 66 application seeking recovery on ground 8. The tribunal can order possession where the tenancy agreement is still in force but to do so the terms of the AT6 and the tenancy agreement must be looked at closely. S18(6) PROVIDES:-

*The sheriff shall not make an order for possession of a house which is for the time being let on an assured tenancy unless:-*

- (a) The ground for possession is ground 2 or ground 8 in part I of Schedule 5 to this Act or any of the grounds in Part II of that schedule, other than ground 9...ground 10 ground 15 or ground 17*
- (b) The terms of the tenancy make provision for it to be brought to an end on the ground in question.*

6. Looking carefully at the tenancy agreement between these parties, Clause 1.4 of the lease states:

*The landlord may seek recovery of possession of the property on one or more of Grounds 1,2,8,11,12,13,14,15 and 16 of Schedule 5 of the Housing(Scotland) Act 1988: Ground 1: previous occupation of the Property by the Landlord as principal home and the Property is now required for the landlord or his spouse, Ground 2 there is a mortgage over the Property and the lender is entitled to sell the Property because the landlord has not abided by conditions of the mortgage; Ground 8 and 12: arrears of rent;...*

7. I have considered whether this wording of ground 8 is sufficient to meet the requirements of s18(6) of the Act. Looking at the case of Royal Bank of Scotland –v- Boyle 1999 HousL.R. 43 and the judgment of Sheriff Principal Wheatley, he stated:-

*The terms of s18(6) are reasonably precise; what is required is that the terms of the tenancy agreement must make provision for it to be brought to an end on the grounds relied on by the landlord in terms of schedule 5 to the Act. In my*

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*opinion that means that the essential ingredients of those conditions must be referred to in the tenancy agreement. An exact citation of those grounds would clearly suffice...I do not think it reasonable to expect tenants to require access to the relevant legislation in order to understand their contract. "*

8. I consider that if this application was amended to rule 65 it would not be appropriate to allow it to proceed as the wording in the tenancy agreement does not meet the terms of s18(6) of the Act as expounded by Sheriff Wheatley.
9. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if **"they consider that an application is vexatious or frivolous"**.
10. "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".
11. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept the application even if it was amended to rule 65.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward

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Legal Member

