



**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/19/0465**

**Re: 14 Montrave Avenue, Cupar, KY15 5DN ("the Property")**

**Parties:**

**Mr James Honeyman ("the Applicant")**

**Mr Robert Bruce and Ms Leanne Graham ("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 rejected 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 and section 33 of the Housing (Scotland) Act 1988 (**Act**) on 13 February 2019. The grounds for possession/eviction were termination of a Short Assured Tenancy. The following documents were enclosed with the application:

- (i) Tenancy Agreement dated 1 November 2013 in respect of the Property which stated it was for a period from 1 November 2013 until 31 October 2014 and continuing monthly thereafter;
- (ii) AT5 dated 31 October and 1 November 2013;
- (iii) Notice to Quit dated 26 November 2018 which purports to give 1 month's notice but does not specify a date for removing;
- (iv) Section 11 Notice; and

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- (v) Section 33 Notice dated 18 February 2019 which specifies the termination date of the tenancy as 27 December 2018.

### 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. An application under section 33 of the Act requires a notice to be served on the tenant advising that the landlord requires possession of the Property and gives 2 month's notice of the date the landlord requires possession. The Section 33 Notice produced purports to give retrospective notification and is accordingly invalid. Furthermore, before granting an order under section 33 the Tribunal must be satisfied that the tenancy has been terminated and tacit relocation is not operating. In this instance the Notice to Quit does not comply with the statutory requirements nor does it specify the date upon which the tenancy is to terminate and vacant possession required. It is accordingly invalid and the Tenancy continues to subsist. 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.

Alan Strain

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Legal Member/Chair

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Date

*1 March 2019*