

Housing and Property Chamber  
First-tier Tribunal for Scotland

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Mr Michael Gordon  
141 Glasgow Road  
Perth  
PH2 0LX

First-tier Tribunal for Scotland  
Housing and Property Chamber  
Glasgow Tribunals Centre  
20 York Street  
Glasgow  
G2 8GT

[www.housingandpropertychamber.scot](http://www.housingandpropertychamber.scot)

29 September 2022

Our Ref: FTS/HPC/EV/22/3033

Dear Mr Gordon

**Application to the First-tier Tribunal for Scotland (Housing and Property Chamber)  
Under Section 33 of the Housing (Scotland) Act 1988  
42 May Place, Perth, PH1 3BH**

Thank you for your application to the First-tier Tribunal for Scotland (Housing and Property Chamber). All the information you provided has been carefully considered, and a decision has been made to reject the application.

Please find attached a copy of the Decision and Statement of Reasons, along with a guidance document regarding Appeals and Reviews of decisions.

Yours sincerely

Michael Johnston  
Casework Officer  
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**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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 Rules")**

**in connection with**

**42 May Place, Perth, PH1 3BH ("the property")**

**Case Reference: FTS/HPC/EV/22/3033**

**Michael Gordon, 141 Glasgow Road, Perth, PH2 0LX ("the Applicant")**

**Abdul Hai Ahmad Yassin, 42 May Place, Perth, PH1 3BH ("the Respondent")**

1. The Applicant seeks an order for possession of the property in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A copy of the tenancy agreement, form AT5, Notice to Quit and Section 33 Notice were lodged in support of the application.

**DECISION**

2. The Legal Member 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;

- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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. After consideration of the application and documents lodged in support of same the Legal Member considers 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.**

**Reasons for Decision**

- 4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "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 has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
- 5. The application lodged with the Tribunal seeks an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the 1988 Act (as amended). Section 33 states(1) states " Without prejudice to any right of a landlord under a short assured tenancy to recover possession of

the house let on the tenancy in accordance with Sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its ish, (b) that tacit relocation is not operating (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e ) that it is reasonable to make an order for possession.” In order to comply with subsections (a) and (b) the landlord must serve a Notice to Quit to terminate the tenancy contract. As the landlord cannot call upon the tenant to vacate the property prior to the ish, the date specified in the Notice must coincide with an ish date.

6. The tenancy agreement lodged with the application states that the term of the tenancy is 17 November 2016 until 16 November 2017. The agreement provides that “if the agreement is not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until ended by either party.” The Notice to Quit which has been lodged with the application purports to terminate the tenancy contract on 26 June 2022, which is not an ish. It therefore appears that the Notice to Quit is invalid.
7. As the Applicant cannot seek an order for possession without first terminating the tenancy contract, and as the Notice to Quit which has been lodged is invalid, the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

### **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.

Nicola Irvine  
Legal Member  
29 September 2022