



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
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**

**28 Aitken Crescent, St Ninians, Stirling FK7 0JX ("the property")**

**Case Reference: FTS/HPC/EV/19/0218**

**Allan McDiarmid, 16 The Oval, Findon, Worthing, BN14 0TN ("the Applicant")**

**Kerrie McGowan, 28 Aitken Crescent, St Ninians, Stirling, FK7 0JX ("the  
Respondent")**

1. By application dated 21 January 2019 the Applicant sought an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement dated 24 May 2016, AT5 Notice, AT6 Notice, Notice to Quit dated 15 October 2018 and Sheriff Officer certificate of service of the Notice to quit and AT6 confirming service on 16 October 2018. In terms of the application the Applicant seeks an order for possession of the property on ground 1 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act").
2. Following requests for further information the Applicant submitted a copy Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and clarified that he wished to proceed on the basis of the Notice to Quit and AT6 (Rule 65) and had not issued a Notice in terms of Section 33 of the 1988 Act, required for an application under Rule 66. The Applicant was also asked

to provide further information regarding the Notice to Quit as it appeared not to contain the prescribed information and did not seek to terminate the tenancy on an ish date of the tenancy. The Applicant responded stating "In respect of the Notice to Quit dates. We do not believe this is relevant. The Scots law doctrine of tacit relocation applies. We also believe all prescribed information was provided on the Notice to Quit to the tenant. Copies attached". A further copy of the Notice to Quit previously submitted was attached to the response.

## DECISION

3. 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.”*

4. **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**

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 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.
6. The application lodged with the Tribunal seeks recovery of possession of an assured tenancy on the basis of ground 1 of the 1988 Act. The Applicant has not served a valid Notice to Quit on the Respondent terminating the tenancy contract. Section 112(1) of the Rent (Scotland) Act 1984 states "No notice by a landlord or a tenant to quit any premises let as a dwellinghouse shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect." Section 2 of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 states "Where a notice to quit is given by a landlord to terminate an assured tenancy under the 1988 Act that notice **shall** contain the information set out in the schedule to these regulations." In the schedule the following is set out as being required "If a landlord serves a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter." The Notice to Quit submitted with the application does not contain this information. Furthermore, it is a legal requirement that the Notice to Quit must take effect on an ish date. The Notice submitted states that the date for removal of the tenant is 15 December 2018. The term of the tenancy stated in the

agreement which has been lodged is 16th May 2016 until 17 November 2016. There is no specific provision for the tenancy continuing beyond that date. It appears therefore that it was allowed to continue by tacit relocation for further 6 monthly periods with ish dates on the 17<sup>th</sup> of May and November of each year. The Notice to Quit served on the Respondent purports to terminate the tenancy contract on 15 December 2018, which is not an ish date of the tenancy. As a result the Notice is invalid and the tenancy contract has not been terminated.

7. The Legal member therefore concludes 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.

Josephine Bonnar

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Legal Member

15 March 2019