

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PAMELA WOODMAN, 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

97 Millcroft Road, Cumbernauld, North Lanarkshire, G67 2QE

**Case Reference: FTS/HPC/EV/19/0911**

AMPG LTD T/A Ahuja Holdings ("**the applicant**")

Mr Brian Baird ("**the respondent**")

1. On 21 March 2019, an application was received under rule 65 of the Procedural Rules, being an application for an order for possession in relation to an assured tenancy under section 18(1) of the Housing (Scotland) Act 1988 ("**1988 Act**").
2. The registered proprietor of the property at 97 Millcroft Road, Cumbernauld, registered under title number DMB28986, is Ajay Ahuja. However, the application form detailed AMPG Ltd T/A Ajuja Holdings as the applicant. No evidence was provided of AMPG Ltd's legal right to submit the application against the respondent.
3. The tenancy agreement provided with the application form narrated "AHUJA HOLDINGS" as the landlord but the signature page referred to "AMPG LIMITED T/A AHUJA HOLDINGS". Based on the information in the application form, Ahuja Holdings was merely a trading name and so not an appropriate designation of a contracting party. No evidence was provided of AMPG Ltd's legal right to grant a tenancy of the property owned by Ajay Ahuja.
4. In addition, the benefits forms signed by the respondent and provided with the application form referred to the landlord being Ajay Ahuja.
5. The paper apart to the application form referred to an application in relation to a private residential tenancy based on rule 109 of the Tribunal's procedural rules. However, the box confirming that the application was to be considered under rule 65 had been ticked and the tenancy agreement provided was not a private residential tenancy. The commencement date of the tenancy was stated to be 26 May 2014 and so it could not be a private residential tenancy.

6. The tenancy agreement referred to rent payable at the rate of £199 per month but the rent payments schedule included entries regarding rent due at £249 per month. No evidence was provided with regard to the landlord having complied with clause 1.7 of the tenancy agreement in respect of each rent increase.
7. The template form of AT6 used was out of date and referred to an application to the sheriff rather than the First-tier Tribunal. It also referred to the landlord being AMPG Limited t/a Ahuja Holdings and sought to rely on ground 8 as set out in schedule 5 to the 1988 Act.

## **DECISION**

8. I considered the application in terms of Rule 8 of the 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."

9. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

## **REASONS FOR DECISION**

10. The tenancy agreement purported to be a short assured tenancy agreement.
11. The tenancy agreement did not restate ground 8 of the 1988 Act in full, on which the applicant was seeking to rely. Accordingly, section 18(6) of the 1988 Act was not applicable in this case and a valid notice to quit required to have been served on the respondent. This was an essential prerequisite to this application for an order for possession in terms of rule 65 of the Procedural Rules.

12. The tenancy agreement provided that the tenancy commenced on 26 May 2014 (including the whole of that day) and had an initial period of six months. Thereafter, it stated that the tenancy would continue on a month to month basis. Accordingly, an ish (or termination) date would require to fall on the expiry of the 25<sup>th</sup> of a month, 25 November 2014 being the last day of the initial term.
13. The purported notice to quit referred to a termination date of 9 October 2018. 9 October 2018 was not a possible ish (or termination) date of this particular tenancy. Accordingly, a valid notice to quit had not been served.
14. In addition, the "Royal Mail Signed For" slip had been provided with the application form but no evidence of delivery was provided and, on checking the tracking reference number on the Royal Mail's website, the following result was given:

"Tracking no. KS797115904GB

Sorry, we were unable to deliver this item at **29-08-2018**. It will now be forwarded to our National Returns Centre to determine the sender's details."

Accordingly, even if a valid ish (or termination) date had been stated in the purported notice to quit (which it had not), the purported notice to quit had not, on the balance of probabilities, been received by the respondent.

15. Accordingly, for the reasons set out above, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

### **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.

Pamela Woodman

Pamela Woodman  
Legal Member  
28 March 2019