

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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

Flat 2, Strathblane, 5 William Street, Dunoon, PA23 7JD

Case Reference: FTS/HPC/EV/19/1803

Wilwall (Properties) Ltd ("the applicant")

Corrigall Black, Solicitors ("the applicant's representative")

Miss Anita Gill ("the respondent")

1. On 12 June 2019, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for recovery of possession of a property let on an Assured Tenancy. The following documents were enclosed with the application:-

- Partial copy Short Assured Tenancy Agreement dated 2 March 2016; and
- Copy Notice to Leave dated 11 April 2019.

DECISION



2. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

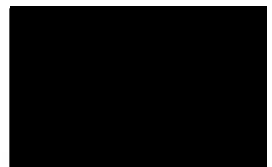
"Rejection of application

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."

3. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and 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

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. 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*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
5. This application proceeds under section 18 of the Housing (Scotland) Act 1988. In terms of the 1988 Act:-

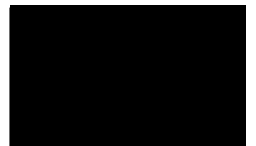
"18 Orders for possession.

- (1) *The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.*
- (2) *The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*
- ... (6) *The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory 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; and*
 - (b) *the terms of the tenancy make provision for it to be brought to an end on the ground in question.*

19 Notice of proceedings for possession.

- (1) *The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*

- (a) *the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or*
 - (b) *the Tribunal considers it reasonable to dispense with the requirement of such a notice.*
 - (2) *The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.*
 - (3) *A notice under this section is one in the prescribed form informing the tenant that—*
 - (a) *the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and*
 - (b) *those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.*
 - (4) *The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—*
 - (a) *two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and*
 - (b) *in any other case, two weeks.*
 - (5) *The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.”*
6. In terms of section 18(6) of the Housing (Scotland) Act 1988, the Tribunal shall not make an order for possession of a house which is, for the time being, let on an assured tenancy (not being a statutory assured tenancy) unless the conditions of subsection (6) are met, which they are not in this case. It follows that, to be entitled to recovery of possession of a property let on an assured tenancy, the applicant would have had to have first terminated the contractual tenancy. One method of doing so would be by bringing the contract to an end at its natural expiry by service of a notice to quit. In this case, the applicant has erroneously served a Notice to Leave, which is a statutory notice to bring to an



end a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. Accordingly, such a notice has no effect on a contractual Assured Tenancy. The contractual Assured Tenancy is continuing by tacit relocation.

7. Separately, the Tribunal is prohibited by s.19(5) from entertaining an application for possession of a property let on an Assured Tenancy where the ground for possession is (as it is in this Application) Ground 8, and a notice under s.19 of the 1988 Act in form AT6 has not been served on the tenant. Accordingly, this Application cannot be accepted by the Tribunal.
8. For those reasons, it is my view that the application is frivolous within the meaning of Rule 8(a). Further, it is my view that it would be inappropriate in these circumstances to accept this application in terms of Rule 8(c). I reject the application.

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.



Andrew Upton
Legal Member
28 June 2019