



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

36 Reid Road, Bathgate, EH48 2TX ("the Property")

Case Reference: FTS/HPC/EV/22/2859

Colin Rae, 61 St Francis Drive, Birmingham, West Midlands, B30 3PS ("the Applicant")

Mr Sergejs Derugins, 36 Reid Road, Bathgate, EH48 2TX ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged a copy of the tenancy agreement, form AT5 and copies of the Notice to Quit and Section 33 Notice. No evidence of service of the Notices has been lodged by the Applicant.

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 the documents submitted by the Applicant 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 Rules.**

Reasons for Decision

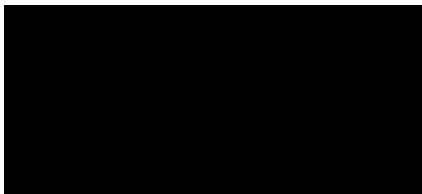
4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application 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. It has been noted clause 2 of the tenancy agreement provides *"the tenancy shall be from and including 11/05/ 2015 ("the Commencement Date") to and including 11/05/2016 ("The Expiration Date"), "the Term". The terms of the tenancy is a (twelve) months Fixed Term as specified on this page. Tacit relocation shall not apply to this tenancy and after the expiry of the fixed term and the tenancy shall continue on a monthly basis unless a replacement fixed term tenancy is agreed."* On the basis that the initial term included 11 May 2016, the monthly term thereafter must have operated from the 12th day of each month to the 11th day of each month. The ish date is therefore the 11th day of each month. The Notice to Quit (which is addressed to the Respondent and the joint tenant) states *"We refer to the above and write to advise that we act on behalf of your landlord, Mr Colin Rae. On behalf of and instructed by Martin & Co Bathgate we hereby give you notice that you are required to remove from the property currently occupied by you at 36 Reid Road, Wester Inch Village, Bathgate, West Lothian, EH48 2TX on or before 10th August 2022 in terms of the tenancy agreement dated 11th May 2015."* It is further noted that the Section 33 Notice states that the tenancy will reach its termination date on 10th August 2022.
6. It appears to the Legal Member that the Notice to Quit is invalid, having called upon the Respondent to leave the property during its term.
7. The Legal Member therefore 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
9 September 2022