



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

24 Beechfield Road, New Elgin, Moray, IV30 6RT ("the Property")

Case Reference: FTS/HPC/EV/22/3498

Darren Strong, 11 Fleurs Road, Elgin, Moray, IV30 1TA ("the Applicant")

Ms Lindsay Dempsie, 24 Beechfield Road, New Elgin, Moray, IV30 6RT ("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

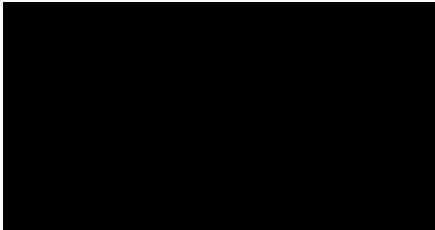
4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; "*What the expression means in this context is, in my view, that the court considers the application 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 that clause 1) provides that "*The date of entry shall be 19 September 2016*". Clause 1e) of the tenancy agreement provides "*the lease shall endure for a period of six months to 19 March 2017 and may continue thereafter on a 2 monthly basis unless terminated by giving notice as herein provided.*" On the basis that the initial term included 19 March 2017, the 2 monthly term thereafter must have operated from the 20th day of March to the 19th day of May and every two months thereafter. The ish date (termination date) is therefore the 19th day of May, July, September, November, January and March. In order for the Notice to Quit to be valid, it would have to terminate the tenancy at the ish date. The Notice to Quit states "*I hereby give you formal Notice to Quit the premises occupied by you at 24 Beechfield Road, New Elgin, IV30 6RT by 21.09.22.*" It is further noted that the Section 33 Notice states that the tenancy will reach its termination date on 21.09.22.
6. Although no evidence has been produced to show when and how the Notices were served on the Respondent, if they were served on the date they were signed (18 July 2022) the Applicant appears to have given sufficient notice to the Respondent. However, 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. The date that the Respondent has been called upon to quit the property is clearly during a new two-monthly term, that two monthly term having started on 20 September 2022.
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
24 October 2022