



**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

Flat 7, 24 Crathes Way, Dundee, DD5 3BY ("the property")

Case Reference: FTS/HPC/EV/20/0930

**Simon Gordon, 2A Montague Street, Broughty Ferry, Dundee, DD5 2RB ("the
Applicant")**

Nigel Smith, Flat 7, 24 Crathes Way, Dundee, DD5 3BY ("the Respondent")

1. By application dated 16 March 2020 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged documents in support of the application including copy short assured tenancy agreement, AT5 Notice, Notice to Quit and section 33 Notice. The Notice to Quit does not stipulate a date upon which the Respondent is to vacate the property. The Section 33 Notice states that the Respondent is to vacate the property on 6 March 2020. Both Notices, together with a covering letter addressed to the Respondent, are dated 5 January 2020 and marked "Hand delivered". A letter to the Homelessness section of the local authority was also lodged with the application. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").

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 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

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. The application lodged with the Tribunal seeks recovery of possession of a short assured tenancy in terms of Section 33 of the 1988 Act. Section 33 states(1) states " Without prejudice to any right of a landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with Sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its ish, (b) that tacit relocation is not operating and (d) the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house." To prevent tacit relocation from operating the Landlord must terminate the tenancy contract at the ish date of the tenancy by serving a Notice to Quit. The Notice to Quit which has been lodged does not stipulate the date upon which it is to take effect and therefore does not comply with Sections 33(a) and (b) of the 1988 Act.
6. The Legal Member proceeded to consider whether the date stipulated in the Section 33 Notice and the covering letter, delivered to the Respondent at the same time as the Notice to Quit, could be deemed to be the relevant date for the Notice to Quit. The date stated in the section 33 Notice and covering letter is 6 March 2020. It is a legal requirement that a Notice to Quit must take effect on an ish date of the tenancy. The term of the tenancy stated in the agreement which has been lodged is 1 September 2011 until 29 February 2012 and "thereafter for two-monthly periods until two months written notice of termination is given by either party". It appears therefore that there is an ish or end date on the 29th of February, April, June, August, October and December each year. If the date in the Section 33 Notice and/or covering letter is deemed to be the date upon which the Respondent is called upon to vacate the property in terms of the Notice to Quit, it purports to terminate the tenancy contract on 6 March 2020 which is not an ish date of the tenancy. As a result the Notice is invalid and the tenancy contract has not been terminated. Accordingly, the Applicant has not complied with the requirements of Section 33 of the 1988 Act.
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.

J Bonnar

Josephine Bonnar
Legal Member
21 April 2020