

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF MELANIE BARBOUR, 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

239 High Street, Kinross, KY13 8DL

Case reference: FTS/HPC/EV/18/0030

MR AARON WILLIAMSON ("the Applicant")

CHANTELLE ANN MCLEAN AND DEAN MCCASKILL ("the Respondents")

1. On 3 January 2018, an application was received from the Applicant via his representative. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Short Assured Tenancy Agreement;
 - (ii) Form AT5 ;
 - (iii) Form AT6;
 - (iv) Notice to Quit;
 - (v) Notice to Local Authority under section 19A of the 1988 Act;
 - (vi) Arrears statement ;
 - (vii) My Deposit Scotland Details; and
 - (viii) Landlord Payment Notification from Perth & Kinross Council

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2. The Tenancy Agreement is in the joint names of Chantelle Ann Mclean and Dean McCaskill. The Tenancy Agreement is dated 9 January 2017. It appears to me that the tenancy commenced on 9 January 2017. In terms of the tenancy the duration of the tenancy was a period of 6 months, and then on a monthly basis thereafter.
3. The Notice to Quit was dated 13 October 2017. The Notice was addressed to Chantelle Mclean only. The Notice to Quit provides that the Tenancy Agreement will terminate on 13 December 2017. No Notice to Quit addressed to Dean McCaskill was submitted with the application.
4. The Form AT6 was dated 13 October 2017. The Form AT6 was addressed to Chantelle McLean. No Form AT6 addressed to Dean McCaskill was submitted with the application.
5. On 15 January 2018 the Housing & Property Chamber wrote to the Landlord's representative, advising that before a decision can be made, it needed to be provided with the following information :-

"The lease states that the tenants are Chantelle Ann McLean and Dean McCaskill. The s19 notice, s33 notice and the notice to quit provided with the application, however are only in the name of Chantelle Mclean. Were notices served on Dean McCaskill? If so, can copies be provided?"

Is there any proof of service of the notices on the tenants?

Is there any proof of intimation of the s11 form to the local authority? A copy of the form is provided but it is unclear if, when or how that was intimated to the local authority?

The title deeds of the property indicate that it is owned by Aaron Williamson and Lynn Dredge equally. The landlord in the lease however is Aaron Williamson only. Why is that? Can it be confirmed that Lynn Dredge was aware of and consented to the granting of the lease".

6. On 24 January 2018 by email correspondence the Applicant's representative responded to the Housing & Property Chamber advising that:-

"The original 6 month lease was in both Miss McLean's and Mr McCaskill's name. Prior to the 6 month lease ending Mr McCaskill was incarcerated. (We had not been made aware of any pending charges or court cases prior to them renting the property.

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When the 6 month lease then ended we agreed for Miss Mclean to stay in the property as at that time the rent was up to date.

This is the reason the s19 notice; s33 and notice to quit were issued solely to Miss McLean.

All letters sent were sent by recorded delivery and these were tracked on the Royal Mail website so we knew they were received.

I was advised on 20/12/17 to email the section 11 notice to the Council at housingoptionsandsupport@pkc.gov.uk I called them and they confirmed my email was received.

When we decided to let the property Aaron and I agreed that Aaron would be named landlord on the landlord application form. I was fully aware and consenting to this.

Should you require any copies of the receipts for the letters sent recorded delivery or the emails sent to the Council then please do not hesitate to contact me”.

DECISION

7. I considered the application 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.*

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(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."

8. After consideration of the application, the attachments and correspondence from the Applicant's representative, I consider 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

9. "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. 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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.

10. Section 16(1) of the 1988 Act provides as follows:-

"16 - Security of tenure

(1) After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below—

(a) continue to have the assured tenancy of the house; and

(b) observe and be entitled to the benefits of all the terms and conditions of the original contract of tenancy so far as they are consistent with this Act but excluding any—

(i) which makes provision for the termination of the tenancy by the landlord or the tenant; or

(ii) which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period) otherwise than by an amount specified in or fixed by reference to factors specified in that contract or by a

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percentage there specified, or fixed by reference to factors there specified, of an amount of rent payable under the tenancy,

and references in this Part of this Act to a "statutory assured tenancy" are references to an assured tenancy which a person is continuing to have by virtue of this subsection, subsection (1) of section 31 below, or section 3A of the Rent (Scotland) Act 1984.

(3)Notwithstanding anything in the terms and conditions of tenancy of a house being a statutory assured tenancy, a landlord who obtains an order for possession of the house as against the tenant shall not be required to give him any notice to quit."

11. Section 18(6) of the 1988 Act provides as follows:-

"18 - Orders for possession

(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."

12. Section 19 (1) of the 1988 Act provides as follows:-

"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) he considers it reasonable to dispense with the requirement of such a notice."

13. Section 33 of the 1988 Act provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

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(1) Without prejudice to any right of the 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 satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that 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.

14. Section 55 (2) of the 1988 Act provides as follows:-

“Interpretation of Part II.

(3)Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, any reference in this Part of this Act to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord or the tenant, as the case may require.”

15. In terms of rule 65 of the Chamber Procedural Rules it provides that :-

“65 - Application for order for possession in relation to assured tenancies

Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act , the application must –

(b) be accompanied by -

(ii) a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii) a copy of the notice to quit served by the landlord on the tenant (if applicable);...”

16. In terms of rule 66 of the Chamber Procedural Rules it provides that:-

“66- Application for order for possession upon termination of a short assured tenancy

Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—

(b)be accompanied by a copy of—

(iii)the notice given to the tenant under section 33(1)(d) of the 1988 Act:

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17. The first issue before me in this application relates to who is “the tenant”. I note that the Tenancy Agreement is in the name of two persons , Chantelle Ann McLean and Dean McCaskill. The interpretation Section 55 of the 1988 Act provides that where two or more persons jointly constitute the tenant in relation to a tenancy, then (except where otherwise provided) any reference to the tenant is a reference to all the persons who jointly constitute the tenant. I consider that “the tenant” in this application must relate to both Chantelle Ann McLean and Dean McCaskill.
18. I do not consider that the incarceration of Mr McCaskill after he had entered into the lease with the applicant brought his interest as a tenant in the tenancy agreement to an end. I consider that that the tenancy can only be brought to an end as either provided for in the tenancy agreement itself (subject to the terms of the 1988 Act) or in accordance with the terms of the 1988 Act. I have no information before me which demonstrated that Mr McCaskill’s interest in the tenancy had been brought to an end.
19. Turning therefore to the grounds for recovery of possession under the 1988 Act Schedule 5, Grounds 8 and 11, I consider that the Applicant would require to have served a Section 19 Notice of Proceeding for possession on the “tenant”, and I consider that the tenant in this case is Chantelle Ann McLean and Dean McCaskill. From the correspondence provided by the Applicant’s representative this does not appear to have been done, as only Chantelle Ann Mclean was served with the Section 19 Notice. I have not been presented with any evidence which would make it reasonable to dispense with the requirement of such a notice. Accordingly, the requirements of Section 19 have not been met and an order for recovery of possession could not be competently made by the First-Tier Tribunal.
20. I would also observe that the application refers to recovery of possession under the 1988 Act Schedule 5, Grounds 8 and 11, however the AT6 at Part 2 refers only to Ground 11 (and there is no reference to Ground 8), it is a statutory requirement contained in Section 19 that notice of the grounds for recovery are set out within the AT6. I consider that failure to do so would mean that no order for recovery could therefore have been made under Ground 8.
21. I would further observe that Part 3 of the AT6 is intended to provide the tenant with sufficient information as to why you are seeking the order under a ground. This part of the AT6 requires that the tenant is provided with notice of what he has to do to put matters right. (See *Torrige M Barbour*

DC v Jones (1985) 18 HLR 107). I do not consider that the AT6 provides sufficient notice to the tenant about what they would have to do to put matters right.

22. Turing to the Notice to Quit, I do not at present draw a conclusion as to whether or not a Notice to Quit is required to be served in relation to recovery of the possession for this tenancy. I did however consider the Notice to Quit which had been served, and considered if a ground of recovery of possession of the tenancy was available under Section 33 of the 1988 Act, would the Notice have been competent. I do not consider that it would have been, as the Applicant would require to have served a Notice to Quit upon both tenants Chantelle Ann McLean and Dean McCaskill. From the correspondence provided by the Applicant's representative this does not appear to have been done as again only Chantelle Ann McLean was served with the Notice to Quit. Accordingly, the requirements of Section 33 have not been met and an order for recovery of possession under this section would not have been competent.
23. I would also observe that the "ish date" in the tenancy agreement is the 9th of every month, and therefore the "ish date" specified in the Notice to Quit which accompanies the application, is not fact the correct date.
24. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met.

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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

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Legal Member

25 January 2018