Housing and Property Chamber
First-tier Tribunal for Scotland

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

(201) 16 Winton Street, Ardrossan ("the Property")

Case Reference: FTS/HPC/EV/21/0386

William Killin, Glenhead Farm, Ardrossan ("the Applicant")

Andrew Manson, (201) 16 Winton Street, Ardrossan ("the Respondent")

1. By application received on 20 February 2021, the Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged documents in support of the application including a Notice to Quit, AT6 Notice and copy tenancy agreement. The application is based on ground 15 of the 1988 Act.

2. The Tribunal wrote to the Applicant on 5 March 2021, requesting further information and documentation. As the application appeared to be based on ground 15(a) of the 1988 Act the Applicant was asked to provide evidence that the Respondent had been convicted of a relevant offence. He was also asked for evidence of service of the Notices on the Respondent, a copy of the section 11 Notice sent to the local authority and advised that the Notice to Quit appeared to be invalid as it did not contain all of the prescribed information and did not give at least 4 weeks notice. In his response the Applicant advised that

he was unable to provide evidence of the conviction, as the Sheriff Court had refused to provide this. He also stated that the Notices had been served by delivery to a personal mail box on 20 January 2020 and that he had not sent a section 11 Notice to the Local Authority. .

DECISION

3. 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."

4. **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 Rules.

Reasons for Decision

5. '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.

6. The Notice to Quit lodged with the application is dated 20 January 2021 and calls upon the Respondent to vacate the property on 17 February 2021. It appears that this notice was sent to the Respondent on 20 January 2021. Section 112 of the Rent (Scotland) Act 1984 ("the 1984 Act") states, "No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwellinghouse shall be valid unless it is in writing and **contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect."** Section 2 of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ("the 1988 Regulations") states "**Where a notice to quit is given by a landlord to terminate an assured tenancy under the Housing (Scotland) Act 1988 that notice shall contain the information set out in the Schedule to these Regulations."** The Schedule states "INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT. 1. Even after the Notice to Quit has run out, before the tenant can be lawfully evicted, the landlord must get an order for possession from the court." 2. If a landlord issues a notice to quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter. 3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the legal aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre."

7. As the period allowed by section 112 is “not less than” four weeks, it does not include the day on which the notice is served on the tenant or the date on which it is to take effect. It is not clear if the notice was actually served on 20 January 2021, or just sent on that date, but even if it was actually received by the Respondent on that date, the Notice does not give the requisite period of notice, if 20 January and 17 February are excluded from the calculation. Furthermore, although the Notice contains the information specified in parts 1 and 3 of the Schedule to the 1988 Regulations, it does not contain the information specified in part 2. As the Notice does not contain this information and does not give the minimum period of notice required, the Notice to Quit is invalid and the Applicant has failed to terminate the tenancy contract.

8. The Legal Member proceeded to consider whether the application could still be considered in terms of Section 18(6) of the 1988 Act. This states “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 1 of Schedule 5 to the 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**”. Section 18(6A) modifies this provision by stating that the Tribunal can make such an order for possession in relation to ground 15. These provisions allows a landlord to make an application to the Tribunal, without serving a valid notice to quit. However, in Royal Bank of Scotland v Boyle 1999 HousLR it was held that, where an invalid Notice to Quit had been served, and the Pursuer sought to rely on Section 18(6) of the Act, “(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate”. The Legal Member notes that the tenancy agreement which has been produced states at paragraph 5.3 that the tenancy can be terminated by “an order from the court for recovery of possession in accordance with part ii of the Housing (Scotland) Act 1988”. The agreement does not narrate any of the grounds for possession or provide a summary containing the “essential ingredients” of them. As a result the Applicant has failed to meet the requirements of section 18(6) and cannot proceed under this section. In order to raise proceedings for recovery of the property, the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation and the application cannot succeed. The Legal Member determines

that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

9. The Legal Member also notes that the Applicant has failed to comply with Section 19A of the 1988 Act, which requires a landlord to send a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act to the relevant local authority, when making an application for possession of a property. The Applicant has also failed to provide evidence of the ground of possession, as required by Rule 65 of the Rules. The application is based on ground 15(a) which requires there to be a relevant conviction. Although the Applicant states that the Respondent was arrested and spent time in prison, no information or evidence is provided that the Respondent was actually convicted of any criminal offence. The Legal Member also notes that the AT6 Notice did not provide the required period of notice and appears to have been sent by email, which is not a competent method of service in terms of the 1988 Act. The application also falls to be rejected for these additional reasons.

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.

Josephine Bonnar
Legal Member
18 March 2021