



**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

129 Braehead Road, Kildrum, Cumbernauld ("the Property")

Case Reference: FTS/HPC/EV/21/ 2055

**Pamela Jane Gunn, 23 Greenfinch Avenue, Broadwood, Cumbernauld ("the
Applicant")**

Michael Keane, 129 Braehead Road, Kildrum, Cumbernauld ("the Respondent")

1. By application received on 24 August 2021, the Applicant seeks an order for recovery of 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 AT6 Notice, End of lease Notice/Notice to Quit and copy tenancy agreement. The Notice to Quit is an email dated 5 April 2021 which states that 3 months notice has been given to end the lease and that the property is being sold . The ground for possession stated in the application form and AT6 is ground 1 of Schedule 5 of the 1988 Act.
2. The Tribunal issued a request for further information to the Applicant on 9 September 2021. The Applicant was asked to provide further information and documents. She was also asked to clarify the validity of the Notice to Quit as it did not specify the date upon which it was to take effect and did not contain the

required prescribed information. The Applicant responded but did not address the issues raised about the Notice to Quit. She lodged a Notice to leave. Two further letters were issued to the Applicant on 10 November and 9 December 2021, directing her to provide a response. She has not responded to either letter.

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 tenancy agreement lodged with the application is an assured tenancy in terms of the Housing (Scotland) Act 1988 ("the 1988 Act"). This Act provides two mechanisms for recovery of possession. Section 33 can be used where the tenancy is a short assured tenancy in terms of Section 32 of the 1988 Act. Alternatively, as in this case, a landlord can seek an order for possession of the property in terms of Section 18. These mechanisms are the only ways to recover possession of an assured tenancy. With one exception, under Section 18(6) of the 1988 Act, a landlord under an assured tenancy must first terminate the tenancy contract by serving a Notice to Quit on the tenant. The tenancy then becomes a statutory assured tenancy, which is terminated when the order for possession is granted under section 18.
7. 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 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.”

8. The Notice to Quit which has been lodged by the Applicant is an email dated 5 April 2021. It does not specify the date upon which it is to take effect and it does not contain the prescribed information. The Notice therefore appears to be invalid. The Applicant appears to have attempted to rectify the position by lodging a Notice to Leave. However, this notice relates to private residential tenancies and not to tenancies under the 1988 Act. The Legal Member concludes that the Notice to Quit lodged with the application is invalid and that tenancy contract has not been terminated.
9. 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”. The only ground specified in the application and AT6 notice lodged is ground 1. As a result, the Applicant cannot rely on section 18(6). 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.
10. As the Notice to Quit is invalid and the requirements of the 1988 Act have not been met the Legal Member 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.

Josephine Bonnar

Josephine Bonnar
Legal Member
21 January 2022