



**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

95 Maree Drive, Cumbernauld ("the property")

Case Reference: FTS/HPC/EV/21/0765

Salah Alkirwi, Earls Homes, 47 Main Street, Cumbernauld ("the Applicant")

**Anne Marchant, Jessica Marchant 95 Maree Drive, Cumbernauld ("the
Respondents")**

1. By application received on 24 March 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 a number of documents in support of the application including copy tenancy agreement, AT6 Notice and Notice to Quit. The Applicant seeks an order for possession of the property on grounds 8, 10, 11 and 12 of Schedule 5 of the 1988 Act.
2. The Tribunal issued a request for further information to the Applicant. The Applicant was advised that the Notice to Quit appeared to be invalid as the date specified in the Notice did not coincide with an ish or end date of the tenancy. The Applicant responded stating that they had given the Respondent 6 months' notice, as required by the Coronavirus (Scotland) Act 2020, and that this had resulted in the relevant date being after the ish date.

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 Procedural 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 Applicant seeks recovery of possession of an assured tenancy on the basis of ground 8, 10, 11 and 12 of Schedule 5 of the 1988 Act. The tenancy agreement lodged with the application states that the term of the tenancy is 2 February 2009 until 1 February 2010. There is no provision for the tenancy to continue on a monthly basis, or otherwise. It therefore appears that the tenancy has continued by tacit relocation with an ish on 31 January 2011, 30 January 2011 and so on. The Notice to Quit lodged with the application purports to terminate the tenancy contract on 21 March 2021, which is not an ish. Section 112(1) of the Rent (Scotland) Act 1984 ("the 1984 Act") states "No notice by a landlord or a tenant to quit any premises let 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." A Notice to Quit must take effect on an ish date of the tenancy. Section 4 of Schedule 1 of the Coronavirus (Scotland) Act amends the notice periods for notices issued under Sections 19 and 33 of the 1988 Act, namely the AT6 and Section 33 Notice. However, these amendments do not affect the Notice to Quit. The Notice lodged with the application is invalid and the tenancy contract has not been terminated

7. The Legal Member proceeded to consider whether the application could be 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**". Clause 16 of the copy tenancy agreement which is lodged with the application makes reference to the tenancy being terminated on grounds 8, 11 and 12 of Schedule 5. 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 while there is a reference to grounds 8, 11 and 12 of schedule 5 in the tenancy agreement, the "essential ingredients" of the grounds have not been narrated. As a result the Applicant has failed to meet the requirements of section 18(6) of the Act 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.

8. 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
12 May 2021