

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

67 Tippetknowes Park, Winchburgh, EH52 6UR

**Case Reference: FTS/HPC/EV/18/0972**

**MR BRIAN BIRD, MR MARTIN BIRD ("the applicants")**

**MR JOHN CUSICK ("the respondent")**

1. On 17<sup>th</sup> April 2018, an application was received from the applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
  - (a) Copy Short Assured Tenancy Agreement;
  - (b) Copy Form AT5
  - (c) Copy Notice to Quit;
  - (d) Copy Section 33 Notice;

The applicant's representative was asked to provide copy s.11 Notice to the local

authority, and proof of service of the notice to quit and section 33 notice. The applicant's representative subsequently provided copy s.11 Notice to the local authority and advised the Tribunal by e-mail of 10<sup>th</sup> May 2018 that she hand-delivered the notice to quit and section 33 notice.

## DECISION

2. I 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, the attachments and correspondence from the

applicant, 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**

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. L.R. 9. 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.
5. Service of a notice to quit may be effected either by sheriff officer personally, or by recorded delivery post by sheriff officer, the party's agent, or the party themselves. No other method of service is competent for a notice given by the landlord, even if the tenant admits receipt (see, for example, *Rennie – Leases (1<sup>st</sup> Ed)* at paragraph 20-24 and *Stair Memorial Encyclopedia Reissue "Landlord and Tenant" at the section "Removings (Service and Evidence of Notice)"* at paragraph 401). Accordingly, there has been no legally-valid service of the notice to quit, which notice is required in terms of clause 1 of the short assured tenancy agreement to bring the agreement to an end and prevent it continuing on a monthly basis until terminated by either party giving no less than two months' notice.
6. Accordingly, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

## **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.

N Kinnear

Neil Kinnear  
Legal Member  
15<sup>th</sup> May 2018