

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

37 Hartlaw Crescent, Glasgow, G52 2JJ ("the Property")

Case Reference: FTS/HPC/EV/19/0102

MULBERRY HOMES LTD (FORMERLY PADDLE LTD) ("the Applicant")

MR JAMES MELDRUM & MRS JACQUELINE MCDONALD ("the Respondents")

1. The Application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for an order for possession in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). Attachments were provided with the application form to support the Application and these attachments included a Notice to Quit, and Form AT6. A copy of the written tenancy agreement ("Move In Agreement") was also attached, together with copies of agreements between the parties to expressly renew the tenancy beyond the initial period of let.
2. The Notice to Quit is dated 5 October 2018 and purports to have terminated the tenancy on 20 October 2018. The Form AT6 is also dated 5 October 2018 and states proceedings would not be raised earlier than 20 October 2018. The Form AT6 failed to specify a numbered Ground in terms of Schedule 5 of the 1988 Act, albeit did narrate Ground 8 detailed in the statute at Part 2 of the Form AT6.
3. The Move In Agreement detailed a "completion date" of 14 October 2013. It specified that the Respondents were to be given occupation of the property for twelve months with payment of £482.00 per month being due by them. In the absence of any provision in the Move In Agreement to the contrary, it is assumed that tacit relocation is in operation.
4. A request for further information, namely a copy of notice to the local authority in

terms of Section 11 of the Homelessness (Scotland) Act 2003, was made on 14 January 2019. A response was received from the Applicant.

5. Another request for further information was made dated 14 February 2019 requesting, amongst other things, details regarding proceedings at Glasgow Sheriff Court concerning the subject matter of the present application. A response was received from the Applicant.
6. The Applicant's response led to another request for further information dated 5 March 2019, requesting submissions as to the jurisdiction of the Tribunal in respect of the Move In Agreement and the apparent lack of sufficient notice given considering the dates specified within the Notice to Quit. A response accompanied by a solicitor's letter providing advice to the Applicant regarding the status of the Move In Agreement was received.
7. Another request for further information was made dated 29 April 2019. It advised that the requested information regarding the current position of proceedings in the Sheriff Court, proof of service of the Notice to Quit and Form AT6 and submissions regarding the period of notice contained in the Notice to Quit was still outstanding. A response was received from the Applicant by email of 29 April 2019 which advised only that the Applicants "need to know if our Move In Agreement constitutes a Tenancy which the Tribunal can deal with".
8. The information confirmed as outstanding in the letter of the Tribunal dated 29 April 2019 has not been received. All of the outstanding information had been requested on more than one occasion.

DECISION

9. The circumstances in which an application is to be rejected are governed by 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."

10. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, 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) and, in any case, that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Rules.**

Reasons for Decision

11. The Application was stated as being made under Rule 65, being an order for possession in terms of Section 18 of the 1988 Act. Leaving aside the failure to number the Ground relied upon in the Form AT6, it is assumed that the Applicant seeks to rely on Ground 8 of Schedule 5 of the 1988 Act.
12. The issue identified in this application is the validity of the Notice to Quit. The Tribunal considers that a valid Notice to Quit is required as the agreement between the parties can be considered an assured tenancy. The statutory essentials are contained within Section 12 of the 1988 Act, which states:-

12 Assured tenancies.

(1) A tenancy under which a house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as—

(a) the tenant or, as the case may be, at least one of the joint tenants is an individual;

and

(b) the tenant or, as the case may be, at least one of the joint tenants occupies the house as his only or principal home; and

(c) the tenancy is not one which, by virtue of subsection [F1(1A) or] (2) below, cannot be an assured tenancy.

[F2(1A) A tenancy cannot be an assured tenancy if it is granted on or after [F31 December 2017] .]

(2) If and so long as a tenancy falls within any paragraph of Schedule 4 to this Act, it cannot be an assured tenancy; and in that Schedule "tenancy" means a tenancy under which a house is let as a separate dwelling.

[F4(3) Subsection (1) is subject to section 46A.]

There is nothing to suggest, from the information accompanying the Application, that the agreement between the parties cannot be an assured tenancy in terms of the 1988 Act. Furthermore, the agreement appears to contain the essentials of a tenancy agreement, namely subjects, rent and duration.

13. The Notice to Quit served by the Applicant only provides 15 days notice. Section 112 of the Rent (Scotland) Act 1984 prescribes the minimum period of notice to be given in respect of any premises let as a dwelling house as 28 days. The Notice to Quit is therefore invalid.
14. It is clear that, without service of a valid Notice to Quit, it cannot be said that the tenancy agreement has reached its *ish*. A contractual tenancy agreement is continuing between the parties.
15. As there is an ongoing contractual tenancy agreement between the parties, an order for possession could only be made under Section 18(6) of the Housing (Scotland) Act 1988. Section 18(6) provides:-

18.— Orders for possession.

(6) The [First-tier Tribunal] ¹⁴ 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 [,] ¹⁵Ground 10 [, Ground 15] ¹⁶ 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.

16. In the present application, assuming an order for possession is sought on the basis of Grounds 8 of Schedule 5 of the Housing (Scotland) Act 1988. Section 18(6)(b) of the Housing (Scotland) Act 1988 states such an order can only be made if the terms

of the tenancy make provision for it to be brought to an end on one of these grounds. In the case of *Royal Bank of Scotland v Boyle* 1999 Hous LR 63, it was held that the written tenancy contract must contain the essential ingredients of the ground relied upon – incorporation by reference would not be sufficient. There is no description of or reference to any of the grounds. It is the view of the Legal Member that this is insufficient to satisfy the requirements of Section 18(6)(b) of the Housing (Scotland) Act 1988.

17. '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. Accordingly, the present application is rejected on the basis that it is frivolous.
18. Furthermore, and in any case, repeated requests were made for further information from the Applicant. This information was necessary to allow the application to proceed. Specifically, irrespective of any issue regarding jurisdiction, it would appear there are live proceedings in the Sheriff Court concerning the subject matter of the present application. In the absence of any response by the Applicant, it would not be appropriate to accept the application.

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.

A Houston

Mr Alastair Houston
Legal Member
9 May 2019

