
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

16 Woodend Road, Ayr, KA7 4QR ("the Property")

Case Reference: FTS/HPC/EV/19/1537

MR NARINDER PAL SINGH SANGHA ("the Applicant")

MISS MARIE SHARP ("the Respondent")

1. The application was made under Rule 66 of the Rules being an application by a private landlord for an order for possession upon termination of a Short Assured tenancy agreement. Attachments were provided with the application form to support the application and these attachments included copies of a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 ("the s.33 Notice"). Proof of service of these notices by Sheriff Officer was provided. A copy of the tenancy agreement was also attached.
2. The tenancy agreement commenced on 17 March 2009, with the initial period of let ending on 17 September 2009.
3. Paragraph 36 of the tenancy agreement states "*The Tenant may only terminate the tenancy at the end date as provided in clause 1 of this Agreement. In order to do so, the Tenant shall give written notice to the Landlord's Agent no later than one calendar month prior to this end date. In the event that the Tenant fails to give such written notice, the tenancy will continue for a further period equal in length to the original period (unless terminated by the Landlord).*"
4. There is no other provision within the written agreement for the tenancy to continue for any other period of let following the expiry of the initial period, in the absence of notice being served by either party.
5. The Notice to Quit accompany the application purports to have terminated the contractual tenancy agreement on 17 May 2019. No other notices purporting to have terminated the

contractual tenancy agreement have been provided.

DECISION

6. The circumstances in which an application is to be rejected are governed by Rule 8 of the 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.”

7. **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) of the Procedural Rules.**

Reasons for Decision

8. The issue identified in this application is the validity of the Notice to Quit. The tenancy agreement makes provision for an initial period of let ending on 17 September 2009. Thereafter, Paragraph 36 of the written agreement confirms that, in the absence of notice to terminate from either party, the tenancy would renew for the same period again. It would therefore appear to the Tribunal that the tenancy is a continuing as a rolling 6 month agreement, with each period commencing on either 17 March or 17 September each calendar year.

9. The copy notice to quit accompanying the application is dated 12 March 2019 and was served upon the Respondent on 14 March 2019. It purports to have terminated the agreement on 17 May 2019.
10. The date specified in the Notice to Quit of 17 May 2018 is not a valid *ish* date on which the tenancy agreement can be brought to an end. Upon the renewal of the agreement by virtue of Paragraph 36, the next *ish* date would be 17 September 2019.
11. The circumstances in which a property let on a short assured tenancy may be recovered upon termination are governed by Section 33 of the Housing (Scotland) Act 1988. Section 33 provides:-

33.— Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating; [and]

[...]

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.

[(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.]

12. 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. Termination of a short assured tenancy agreement has not occurred.
13. '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.

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.

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Mr Alastair Houston
Legal Member
4 June 2019