



**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**

**Side Cottage, Tinwald, Dumfries ("the property")**

**Case Reference: FTS/HPC/EV/20/0912**

**John Cunningham Jardine Tinwald House, Tinwald, Dumfries ("the Applicant")**

**Pauline Jack, Side Cottage, Tinwald, Dumfries ("the Respondent")**

1. By application dated 11 March 2020 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged documents in support of the application including copy tenancy agreement, AT5 Notice, AT6 Notice, Notice in terms of Section 33 of the Housing (Scotland) Act 1988 and Notice to Quit. The Notices stipulate that the Respondent is to vacate the property on 1 February 2020. A Sheriff Officer Certificate of service was also submitted confirming that the Notices were served on the Respondent on 20 November 2019. In terms of the application the Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").

**DECISION**

2. 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.”*

- 3. 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**

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 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.

5. The application lodged with the Tribunal seeks an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the 1988 Act. Section 33 states(1) states “ Without prejudice to any right of a 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) 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.” The Notice to Quit which has been lodged with the application calls upon the Respondent to vacate the property on 1 February 2020. It is a legal requirement that a Notice to Quit must take effect on an ish date of the tenancy. The term of the tenancy stated in the tenancy agreement which has been lodged is 1 May 2014 until 30 April 2015 and monthly thereafter. It appears therefore that there is an ish or end date on the 30<sup>th</sup> of each month. The Notice to Quit lodged with the application purports to terminate the tenancy contract on 1 February 2020, which is not an ish date of the tenancy. As a result the Notice is invalid and the tenancy contract has not been terminated. Accordingly, the Applicant has not complied with the requirements of Section 33 of the 1988 Act.
  
6. The Legal Member proceeded to consider the AT6 Notice which has been lodged with the application and whether the application can be considered in terms of Section 18(6) of the 1988 Act and Rule 65 of the Rules. 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 Legal Member notes that the AT6 Notice served on the respondent and lodged with the application states that an order for recovery of possession is to be sought on ground 10. The provisions of Section 18(6) of the 1988 do not therefore apply. In any event, the Legal Member notes that ground 10 only applies where the tenant has given a notice to quit. The Notice lodged with the application was given by the landlord to the tenant.
  
7. In order to raise proceedings for recovery of the property in terms of Rule 66 of the Rules 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 Section 33 of the 1988 Act. Furthermore, the application cannot be considered under Rule 65 and Section 18(6) of the 1988 Act as this section does not apply to the ground stipulated in the AT6 Notice

8. The Legal member therefore concludes 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  
Legal Member  
15 April 2020