



**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**

**("the property")**

**Case Reference: FTS/HPC/EV/22/1919**

**George Nicoll, c/o 44 Kinghorne Road, Dundee ("the Applicant")**

**Shona Alcorn, 71C Sandeman Street, Dundee ("the Respondent")**

1. 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"). A Notice to Quit was lodged in support of the application. The Notice to Quit is dated 3 February 2022 and calls upon the Respondent to vacate the property on 1 June 2022. Following a request for further information, the Applicant submitted a tenancy agreement. This indicates that the tenancy started on 6 May 2014. The agreement does not specify the term or the termination date of the tenancy but indicates that it is a "rolling contract"
2. The Tribunal issued a further request for information. The Applicant was asked to clarify the validity of the Notice to Quit as the date specified does not coincide with an ish. In response, the Applicant stated that the date had been chosen to give the Respondent sufficient time to move out and that the lease only provides for 2 months notice.

## 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".
6. The Applicant seeks recovery of possession of an assured tenancy. The tenancy agreement provides for a start date of 6 May 2014 but does not specify the term of the tenancy or the termination date. In such circumstances, a term of 1 year is usually assumed. It therefore appears that the tenancy has continued by tacit relocation, with an ish on the 6 May each year. The Notice to Quit which has been lodged with the application purports to terminate the tenancy contract on 1 June 2022, which is not an ish. The Legal Member is satisfied that the Notice to Quit is not is not valid and that the tenancy contract has not been terminated.
7. Before an order for possession can be granted by the Tribunal, the tenancy contract between the parties must be terminated by service of a valid Notice to Quit. The only exception to this is where section 18(6) of the 1988 Act applies. 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 tenancy agreement lodged with the application does not make provision for the tenancy to be terminated on any of the relevant grounds. The Legal Member is therefore satisfied that Section 18(6) does not apply and that the Applicant cannot seek possession of the property without a serving a valid notice to quit.
8. As the Applicant cannot seek an order for possession without first terminating the tenancy contract and, as the Notice to Quit which has been lodged is invalid, 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  
Legal Member  
7 November 2022