

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS BY THE LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8(a) of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 ("the Procedural Rules")

in connection with

26 Stewarton Road, Glasgow, G46 7UZ

Case Reference: FTS/HPC/EV/19/3642

The Parties:-

Mr Abdul Shakoor, 20 Brewery Street, Dumfries, DG1 2RP ("the Applicant")

**Mr Saqib Shakoor, 20 Brewery Street, Dumfries, DG1 2RP ("the Applicant's
Representative")**

Mrs Sehrina Ashraf, 26 Stewarton Road, Glasgow, G46 7UZ ("the Respondent")

1. By application received 12 November 2019 the Applicant applied to the Tribunal under Rule 65 of the Procedural Rules for an order for recovery of possession of a short assured tenancy under section 18 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-
 - (1) Tenancy Agreement between the parties dated 20 June 2014;
 - (2) Form AT6 dated 1st October 2019 stating that proceedings would not be raised any earlier than 9 November 2019;
 - (3) Notice to Quit dated 1 October 2019 purporting to terminate the tenancy as at 17th October 2019;
 - (4) Proof of delivery receipt for AT6 and Notice to Quit dated 19 October 2019;
and
 - (5) Section 11 Notice to East Renfrewshire Council.

2. On 3 December 2019 the Tribunal wrote to the Applicant highlighting an issue with the Notice to Quit, namely that it did not appear to terminate the tenancy agreement at a valid ish date. Further, the Notice to Quit did not appear to give the required period of notice, having been signed for by the Respondent on 19 October 2019, and the AT6 appeared incomplete.

DECISION

3. The Legal Member determined to reject the application on the basis that she had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

4. The Legal Member considered the application together with the attachments and the subsequent correspondence from the Applicant's Representative.
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. 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 the Legal Member had to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
6. Section 18(6) of the Housing (Scotland) Act 1988 provides that an order for repossession on certain grounds set out in Schedule 5 of the Act can only be granted during the term of the contractual tenancy where the tenancy agreement makes provision for repossession to be sought on the ground in question. This includes ground 8 which the Applicant seeks to rely upon. In this case, the tenancy agreement provides at Clause 8 that "*the tenancy agreement may be terminated by an order for possession granted by the court on an application under the ground 1 or 2 as specified in Schedule 5, Part 1 of the Housing (Scotland) Act 1988*". There is no provision for repossession to be sought on any of the other grounds set out in Schedule 5 of the Act. In the absence of provision in the tenancy agreement for repossession to be sought on ground 8, the Applicant would be unable to proceed without first terminating the contractual tenancy between the parties by service of a valid Notice to Quit.
7. The Applicant has provided a Notice to Quit which purports to terminate the tenancy on 17th October 2019. However the term of the tenancy as stated in the tenancy agreement is from 11 June 2014 to 10 June 2015. There is no provision for the tenancy to continue thereafter therefore it continues on an annual basis. On that basis the Notice to Quit is invalid. Even if the Notice to Quit had specified the correct end date of the tenancy, it was dated 1st October 2019 with an effective date of 17th October 2019 and it wasn't signed for by the Respondent under 19th October 2019. It therefore failed to give the Respondent the required period of notice for a valid Notice to Quit which having regard to the term of the tenancy in this case would be forty days.
8. The Applicant would therefore require to serve a valid Notice to Quit in order to bring the contractual tenancy to an end before he could rely upon ground 8 under Schedule 5 of the Act. Accordingly the Legal Member determined that the application had no prospect of success on the basis that the provisions of section 18 of the Housing (Scotland) Act 1988 could not be met and the application could

therefore be held to be futile and misconceived as a result. Accordingly having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Tribunal concluded that the application was frivolous and rejected it under Rule 8(1)(a) of the Procedure Regulations.

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.

R. O'Hare

15 January 2020