



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.**

In respect of application by Mr Colin Robertson in terms of rule 65 of the Rules.

**Case reference FTS/HPC/EV/22/2726**

At Glasgow on the 12 September 2022, Lesley Anne Ward, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules

1. This is an application by Mr Colin Robertson for eviction in terms of rule 65 of the Rules. The application is dated 4 August 2022 and was entered in the case management system of the Tribunal Chamber on 9 August 2022.
2. The application was accompanied by the following documents:
  - Covering letter setting out the reasons for making the application.
  - Notice to leave
  - AT6
  - Tenancy agreement.
  - Mortgage Letter
3. I have reviewed this application as inhouse convenor today. It appears that the applicant is seeking to recover possession of his property because his interest only mortgage will reach its term in September 2022 and the capital element will require to be repaid to the lender. The application has been made

on the basis that eviction is sought on ground 2 of schedule 5 of the Housing (Scotland) Act 1988, ('the Act').

4. The applicant entered into a short assured tenancy agreement with his tenant on 4 November 2015. The applicant has not served a notice to quit bringing the tenancy to an end. He has served a notice to leave which only relates to private residential tenancy agreements constituted after December 2017 and does not relate to assured or short assured tenancy agreements. Even if the notice to leave could be treated as a notice to quit, the notice to leave does on tie in with the ish date of the 14<sup>th</sup> of the month. The contractual tenancy is therefore continuing and a statutory tenancy is not in force.
5. It would still be open to the applicant to proceed in terms of s18(6) of the Act as the tenancy agreement narrates the grounds for bringing the tenancy to an end in terms of schedule 5 of the Act in full. There is however a difficulty as in terms of the AT6 lodged, the applicant is seeking to bring the tenancy to an end on the basis of ground 2 which provides:

The house is subject to a heritable security granted before the creation of the tenancy and—

(a) as a result of a default by the debtor the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; and

(b) either notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered on this Ground or the [F5First-tier Tribunal] is satisfied that it is reasonable to dispense with the requirement of notice.

6. As is noted on page 269 of Stalker on Evictions in Scotland, "the purpose of this ground is to enable a heritable creditor who has, following a default buy its debtor, obtained decree for possession in terms of the relevant provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970, to seek the eviction of any tenant to whom the borrower let the subjects under an assured tenancy". In other words, this eviction ground is only available to a heritable creditor and not a landlord. The AT6 does not narrate any other eviction grounds.
7. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if "**they consider that an application is vexatious or frivolous**".
8. "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".
9. I consider that this application is frivolous or vexatious as it is misconceived and has no reasonable prospect of success as the eviction ground being sought by the applicant is not applicable to him. It

therefore has no legal basis and the tribunal would not be able to grant the eviction he is seeking on that ground. The AT6 does not narrate any remaining eviction grounds and there is nothing in the application or covering letter to suggest any other eviction grounds are applicable. I do not consider it would be appropriate to accept the application given there it has no prospect of success.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward

Legal Member 12 September 2022