



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/EV/21/0035**

**Re: 78 Dalmilling Road, Ayr, KA8 0PF ("the Property")**

### **Parties**

**Mr Euan Blaikie, Mrs Julie Blaikie (Applicant)**

**Mr Mark McVey, Ms Jennifer Laing (Respondent)**

**Parkview Property Ltd (Applicant's Representative)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

### **Background**

1. The application was received by the Tribunal originally under Rule 65 on 6 January 2021. The grounds for possession/eviction were stated to be Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 13 March 2016 until 13 September 2016 then continuing monthly thereafter until terminated by either party giving 2 months' notice;
- (ii) Notice to Quit dated 30 September 2020 specifying that the tenancy would terminate on 4 January 2021;
- (iii) Royal Mail track and trace confirming the posting of the Notice to Quit on 1 October 2020;
- (iv) Section 11 Notice to Local Authority;

- (v) AT6 dated 30 September 2020 specifying the grounds for possession as being Ground 1 and that the earliest date for raising proceedings was 5 January 2021.

2. The application was considered by the Tribunal and further information was requested by letter of 2 February 2021. In particular the Applicant was requested to provide the following further information:

*“2) The notice to quit specifies a date to quit the Property which is not an ish of the lease. Clause 10 of the lease agreement appears to provide that the lease may be terminated immediately if the tenant fails to pay an instalment of rent within 4 weeks of its due date or if the tenant is in breach of the essential terms of the lease. Do you seek to rely on such a breach in relation to the notice to quit, and if so, could you please provide details of the breach relied upon. “*

3. The Applicant replied by email of 2 February 2021 in the following terms:

*“With regard to the notice to quit, the landlord does not seek to rely on a breach of clause 10 of the lease. The landlord wishes to seek possession of the property to use as his main residence. The landlord wishes to rely on Ground 1 in relation to his notice to leave. “*

### **Reasons for Decision**

4. The Tribunal 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;·*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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."*

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”.*

6. The application seeks to proceed under Rule 65 using Ground 1 of Schedule 5 to the Act. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 13 March 2016 until 13 September 2016 then continuing monthly thereafter until terminated by either party giving 2 months' notice. The Notice to Quit states 4 January 2021 as the date by which

the Respondent should quit and remove. The 4 January 2021 was not an “ish” of the tenancy. The tenancy was not validly terminated at its “ish” and continues as a consequence.

7. As the tenancy has not been validly terminated the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

**Alan Strain**

**11 February 2021**

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**Legal Member/Chair**

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**Date**