DECISION AND STATEMENT OF REASONS OF DAVID BARTOS, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

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

in connection with

5 Moran Court, East Academy Street, Wishaw, ML2 8FB

Case Reference: FTS/HPC/EV/19/3079

Mrs Margaret Nelson, 6 Heather Row, Carluke, Lanarkshire ML8 5EG ("the applicant")

(1) Terry Bradley and (2) Mrs Karen Bradley, 5 Moran Court, East Academy Street, Wishaw ML2 8FB ("the respondents")

1. On 2 October 2019 an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application under section 18 of the Housing (Scotland) Act 1988.

DECISION

2. I considered the application in terms of Rule 8 of the 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, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that the application is 'frivolous' and that it would not be appropriate to accept the application within the meaning of Rule 8(1)(a) and (c) 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. 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".* To decide whether this application is 'frivolous' I have to assess whether this application is misconceived, and has no prospect of success.

5. In terms of section 18(6) of the 1988 Act it is a pre-requisite for an order for possession that –

   (a) The ground for possession is ground 2 or ground 8 in Part I of schedule 5 to the [1988 Act] or any of the grounds in Part II of that schedule other than grounds 9, 10, or 17; and

   (b) The terms of the tenancy make provision for it to be brought to an end on the ground in question,

   unless the tenancy is a statutory assured tenancy.

6. It is plain from both the Short Assured Tenancy Agreement dated 17 October 2017 and the Extension to Short Assured Tenancy Agreement dated 6 January 2019 that the terms of the tenancy do not make provision for it to be brought to an end on the basis of ground 8 of schedule 5 to the 1988 Act. Ground 8 is not set out in either tenancy agreement nor is it even referred to. The provisions of clause 4.3 in the Extension are totally inadequate in that regard as are those of clause 4.3 in the original agreement.

7. Furthermore there is nothing to indicate that the tenancy has become a statutory assured tenancy. The tenancy is due to run to 5 January 2020 in terms of the Extension. For it to become a statutory assured tenancy a notice to quit on 5 January 2020 (the "ish" or expiry date of the tenancy) would have been required and the tenant have remained in possession after that date. It is plain that no such notice has been given and 5 January 2020 has not yet occurred. The notice that there is requires the respondents to quit on 1 October 2019. Such notice is clearly premature and invalid.

8. In these circumstances I take the view that the pre-requisite of section 18(6)(b) cannot be met. In addition the application appears to have been brought by only one of two landlords (unless the co-owner Robert Nelson has died). That too indicates that the current application is misconceived and doomed to fail.

9. Accordingly, for these reasons, this application must be rejected upon the basis that

the application is 'frivolous' within the meaning of Rule 8(1)(a) of the Procedural Rules.

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.

David Bartos
Legal Member acting under delegated powers
16 October 2019