



**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/20/1443**

**Re: 30 Craig View, Springside, North Ayrshire, KA11 3AA ("the Property")**

### **Parties**

**Mr Peter Fisher (Applicant)  
Ms Ashley Nixon (Respondent)**

**Secure Letting (Ayrshire) (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 under Rule 66 on 1 July 2020. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The following documents were enclosed with the application:

- (i) SAT commencing 10 October 2016 until 11 April 2017 and continuing month to month thereafter;
- (ii) AT5 dated 15 September 2016;
- (iii) Notice to Quit dated 27 February 2020 which specified 12 May 2020 as the date to quit;
- (iv) Section 33 Notice dated 27 February 2020 which specified 12 May 2020 as the date of termination of the SAT;

- (v) Signed receipt of service of Notices by Respondent dated 27 February 2020;
- (vi) Section 11 Notice and email serving dated 1 July 2020.

2. The application was considered by the Tribunal and further information was requested by letter of 15 July 2020 as follows:

*The legal member requests that you advise why you consider that the ish date is the 12th of the month. She notes that the Notice to Quit seeks vacant possession as at 12th of May, however in the lease agreement provided the initial term ended on the 11th of April 2017.*

The Applicants' Representatives were given until 29 July 2020 to provide the information and informed that if it was not provided the President may decide to reject the application.

3. The Applicants' Representatives responded by email of 29 April 2020 informing the Tribunal *"I note that the ish date is the 11th however I believe it is acceptable to have a day or 2 after this date just as long as it is not before the ish date."*

### **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 66 and section 33 of the Act. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. To have been validly terminated the Notice to Quit and Section 33 Notices require to have been served upon the Respondent terminating the SAT at its ish. The ish date of the SAT is the 11<sup>th</sup> of the month. The Notice to Quit specifies the 12<sup>th</sup> of May 2020 as the ish date and is accordingly invalid. The Tribunal would not be able to

grant an order to repossess the Property as the tenancy had not been validly terminated.

7. In light of the above reasons 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.**

# A Strain

**24 August 2020**

---

**Legal Member/Chair**

---

**Date**