

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



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

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

in connection with

124 Victoria Street, Craigshill, Livingston, West Lothian, EH54 5BJ

**Case Reference: FTS/HPC/EV/18/0708**

**MRS ELIZABETH THOMSON ("the applicant")**

**MR PIOTR KRASOWSKI ("the respondent")**

1. On 21<sup>st</sup> March 2018, an application was received from the applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
  - (a) Copy Short Assured Tenancy Agreement;
  - (b) Partial copy of Form AT5
  - (c) Copy Notice to Quit;
  - (d) Copy Section 33 Notice;
  - (e) Copy letter to local authority enclosing copy notice to quit.

## DECISION

2. I 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;*

*(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 it is frivolous within the meaning of Rule 8(1)(a) 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*". It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
  
5. The notice to quit, which is dated 8<sup>th</sup> January 2018, is invalid in respect that it specifies a date to leave the premises of 8<sup>th</sup> March 2018. That termination date is not an *ish* of the tenancy agreement, as that date is required to be in order to constitute an effective notice. The Short Assured Tenancy Agreement states at paragraph 3 that the tenancy commences on 24<sup>th</sup> January 2011 and will end on 24<sup>th</sup> July 2011 ("The end Date") (sic), and that if the agreement is not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until ended by either party. Accordingly, the *ish* of the lease falls on the 24<sup>th</sup> day of each month and thus the notice to quit is ineffectual.
  
6. Albeit that the applicant states in her application that she relies on grounds 10, 14, and 16 of Schedule 5 of the *Housing (Scotland) Act 1988* (which might be applicable to an application brought under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for an order for possession in relation to assured tenancies and in terms of section 18 of the *Housing (Scotland) Act 1988*), no Form AT6 giving notice to the respondent of those grounds in terms of section 19 of the *Housing (Scotland) Act 1988* appears to have been served or provided with the application. Section 19(1) of the *Housing (Scotland) Act 1988* provides that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlord (or, where there are joint landlords, any of them) has served on the tenant such a notice or the Tribunal considers it reasonable

to dispense with the requirement of such a notice. I do not consider it reasonable in the circumstances of this application to dispense with the requirement of such a notice as firstly this application has been brought under rule 66 of the Chamber Procedural Rules and in terms of section 33 of the *Housing (Scotland) Act 1988* and not under Rule 65 of the Chamber Procedural Rules and in terms of section 18 of the *Housing (Scotland) Act 1988*, and secondly to dispense with the requirement of such a notice would mean that the respondent has not been provided with the requisite information specified in the prescribed form in terms of that statutory provision.

7. For completeness, I would note that the copy AT5 provided with the application appears to be solely the final page signed by the tenant. I would also note that the section 33 notice was served upon the tenant on 10<sup>th</sup> January 2018. As the notice, which is dated 8<sup>th</sup> January 2018, specifies that the landlord requires vacant possession as at 12 noon on 8<sup>th</sup> March 2018, the respondent has at the time of service been given notice which is two days short of the two month period required under section 33 of the *Housing (Scotland) Act 1988*. I would further note that albeit the applicant has provided a copy of a letter she sent to the local authority enclosing copy notice to quit, this does not appear to include a notice in the form and manner prescribed under section 11(3) of the *Homelessness etc. (Scotland) Act 2003* as is required in terms of section 19A(2) of the *Housing (Scotland) Act 1988*. Finally, I note that the applicant is co-proprietor of the premises with another person who is neither listed as a joint applicant, nor in respect of whom there has been any confirmation that that individual is aware of or in agreement with this application being brought.
8. For the reasons set out in paragraphs 4, 5 and 6, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

### **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.

**N Kinnear**

Neil Kinnear  
Legal Member  
3<sup>rd</sup> April 2018