



**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/21/2508**

**Re: 82 Peveril Rise, Livingston, EH54 6NX ("the Property")**

**Parties**

**Mr Ian Slater, Mrs Kirsty-Ann Slater (Applicant)**

**Mr Andrew Forbes, Ms Lorna Forbes (Respondent)**

**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 66 on 12 October 2021. The grounds for possession/eviction were stated to be termination of a short assured tenancy under the Housing (Scotland) Act 1988 (**Act**). The following documents (of relevance to this decision) were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 7 December 2015 until 7 June 2016 then continuing monthly thereafter until terminated by the landlord giving 2 months' notice; and
- (ii) Notice to Quit and section 33 notice dated 8 August 2021 specifying that the tenancy would terminate on 11 October 2021.

2. The application was considered by the Tribunal and further information was requested by letter of 8 November 2021. In particular the Applicant was requested to provide the following further information:

*“Before a decision can be made, we need you to provide us with the following:*

- 1. Please provide proof of service of the section 33 Notice and Notice to Quit;*
- 2. Please provide proof of service of the section 11 Notice on the local authority;*
- 3. Please provide your comments on the validity of the notice to quit. The “ish” date of the tenancy is 7th whereas the notice to quit specifies 11th October;*
- 4. Please provide your comments on the notice period given in the section 33 Notice. 6 months’ notice is required under section 33;*
- 5. The property is in joint names. Please either add the joint owner as an applicant or provide his written consent for you to pursue this application in your sole name;*
- 6. There are joint tenants. Please confirm whether or not the joint tenant is to be added as a respondent;*
- 7. Please provide a copy of the AT5.*

*Please reply to this office with the necessary information by 22 November 2021. If we do not hear from you within this time, the President may decide to reject the application.”*

3. The Applicant replied by email of 10 November 2021 in the following terms (in so far as was relevant to the Decision):

“3. Please provide your comments on the validity of the notice to quit. The “ish” date of the tenancy is 7th whereas the notice to quit specifies 11th October;

- The tenancy agreement was originally signed on 7th December 2015.
  - The short term assured tenancy started on 27th December 2015 and (as per the tenancy agreement) ended on 26th June 2016. As per the conditions of the Short Assured Tenancy, the agreement has continued on a monthly basis.
  - The tenants were given forewarning of our intention to ask them to leave the property and requested, in writing, by SMS text message (attached) the date of 11th October 2021 as the date to vacate the property.
  - The notice to quit was served by email and post on 8th August 2021. Hard copy in post sent by recorded delivery and receipt confirmed by Andrew Forbes 9th August 2021.
  - A pre-paid envelope was included, with a copy to be signed and returned. This was not sent back by the tenants.
4. Please provide your comments on the notice period given in the section 33 Notice. 6 months’ notice is required under section 33;
- We contacted the tenants advising that it will be our intention to sell the property and offered first refusal to buy. The tenants advised that they can not purchase the property and requested that we serve a notice to quit, we had not intended to progress as fast as this but understood the tenant’s requirement to engage the council.
  - The Tenants advised us that they had set a meeting with the council for 16th August 2021 and requested that we issue a notice to quit, at speed, which they could use in this meeting. This was issued on 8th August 2021.

- At this time the tenants asked for the notice period, we were not aware of the 6-month minimum at this stage – it was not clear that it affected this type of tenancy. We advised that the minimum notice period was 2 months but offered the tenants to choose their own date.
- The attached SMS text message from Lorna Forbes to Kirsty-Ann Slater shows that the 11th October 2021 was requested as the date that they would vacate the property. Lorna chose this date as she would be on annual leave from her job, we were led by the tenant at this stage.
- The Tenants did not advise that there was any issue notice to quit following their meeting with the council.
- We would have happily made the notice to quit date 8th February 2022 or later if requested by the tenant.
- The Tenants first communicated their decision to remain in the property, indefinitely, on 9th October 2021 by text message. “

## 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. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 7 December 2015 until 7 June 2016 then continuing monthly thereafter until terminated by the landlord giving 2 month’s notice. The Notice to Quit states 11 October 2021 as the date by which the Respondent should quit and remove. The 11 October 2021 was not an “ish” of the tenancy. The tenancy was not validly terminated at its “ish” and continues as a consequence.

7. As amended by the Coronavirus (Scotland) Act 2020 a section 33 Notice needs to give 6 months’ notice to a tenant. In this case only 2 months’ notice has been given. The application is accordingly premature.

8. As the tenancy has not been validly terminated and the application premature 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.**



26 November 2021

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**Legal Member/Chair**

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**Date**