



**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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**

**Flat 0/2, 2303 Dumbarton Road, Yoker, Glasgow, G14 0NL ("the property")**

**Case Reference: FTS/HPC/EV/22/2579**

**Kian Northcote, 27 Main Street, Abernethy, PH2 9JH ("the Applicant")**

**Helen Dillon, Flat 0/2, 2303 Dumbarton Road, Yoker, Glasgow, G14 0NL ("the Respondent")**

1. The Applicant seeks an order for possession of the property in terms of Rule 66 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A copy of a tenancy agreement, Notice to Quit, Section 33 Notice and section 11 Notice were lodged in support of the application.
2. On 30<sup>th</sup> August 2022 The Tribunal issued a request for further information, including asking the Applicant to explain the basis for the date specified in the Notice to Quit, as this requires to be an ish or end date of the tenancy. The Applicant's agent responded by email on 31<sup>st</sup> August 2022 stating that the landlord had asked for the tenant to be given a few more weeks to find somewhere, and her colleague, who no longer works for the company, served the notice and gave the tenant and extra three weeks. .

**DECISION**

3. The Legal Member 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.

4. **After consideration of the application and documents lodged in support of same the Legal Member considers 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**

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 LR9. He indicated at page 16 of the judgment; "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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.

6. The Applicant seeks recovery of possession of an assured tenancy. The tenancy agreement lodged with the application states that the term of the tenancy is 3 March 2017 until 4 March 2018. There is provision for the tenancy to continue on a month to month basis thereafter. It therefore appears that the tenancy has continued by tacit relocation with an ish on the 4th of each month. The Notice to Quit which has been lodged with the application purports to terminate the tenancy contract on 26<sup>th</sup> July 2022, which is not an ish. It therefore appears that the Notice to Quit is invalid.
7. Before an order for possession can be granted by the Tribunal, the tenancy contract between the parties must be terminated by service of a valid Notice to Quit. The only exception to this is where section 18(6) of the 1988 Act applies. This states "The First tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.. The application is based on grounds 1, 8, 12 and 14. However, there is no provision in the tenancy agreement for the tenancy to be brought to an end on any of these grounds. Furthermore, Section 18(6) does not apply to ground 1.
8. As the Applicant cannot seek an order for possession without first terminating the tenancy contract, and as the Notice to Quit which has been lodged is invalid, the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

### **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.

# A J Kelly

Alison J Kelly  
Legal Member  
3<sup>rd</sup> October 2022