Housing and Property Chamber
First-tier Tribunal for Scotland

DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR, 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 Procedure Rules")

in connection with

99 Nigel Rise, Livingstone ("the property")

Case Reference: FTS/HPC/EV/21/0050

Chris Donald, 1 Muirhill Steadings, Auchengray, Carnwath ("the Applicant")

Sharon Jolie, 99 Nigel Rise, Livingstone ("the Respondent")

1. By application received on 8 January 2021 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Procedure Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged documents in support of the application including copy tenancy agreement, Notice in terms of Section 33 of the Housing (Scotland) Act 1988 and Notice to Quit. The Notices stipulate that the Respondent is to vacate the property on 28 February 2021.

2. The Tribunal issued a request for further information to the Applicant. The Applicant was asked to explain the basis upon which the Tribunal could consider the application as the Notice to Quit appeared to be invalid. The Applicant was advised that the date specified in the Notice did not appear to coincide with an ish of the tenancy. In addition the Notice did not contain the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ("the 1988 regulations"). Furthermore, the date specified in both Notices had not passed so the

application appeared to be premature. The Applicant was also asked to provide a copy of the notice in terms of Section 11 Homelessness etc (Scotland) Act 2003. In his response, the Applicant stated that he had received advice that she should submit the application, that he was unaware of the issues with the Notice to Quit and that he had relied on the information contained within the Scottish Government Website.

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 application lodged with the Tribunal seeks an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the 1988 Act. Section 33 states(1) states " Without prejudice to any right of a landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with Sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its ish, (b) that tacit relocation is not operating and (d) the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house." In order to comply with subsections (a) and (b) the landlord must serve a Notice to Quit to terminate the tenancy contract at the ish.

7. The term of the tenancy stated in the tenancy agreement which has been lodged by the Applicant is 1 July 2014 to 1 July 2015. The agreement states 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 terminated by either party. It appears therefore that there is an ish or end date on the 1st of each month after the initial term. The Notice to Quit lodged with the application purports to terminate the tenancy contract on 28 February 2021, which is not an ish date. The Notice is therefore invalid and the tenancy contract has not been terminated. In order to raise proceedings for recovery of the property in terms of Rule 66 of the Rules the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not terminate the contractual tenancy. As a result, the Applicant has failed to

comply with the requirements of Section 33 of the 1988 Act

8. The Legal Member also notes that the Notice to Quit does not contain the information prescribed in the 1988 Regulations. This information is mandatory and the absence of same also means that the Notice is invalid. The application is also premature, as it has been submitted before the end of the relevant notice period which was increased to 6 months by the Coronavirus (Scotland) Act 2020. Lastly, the Applicant has failed to a serve a Notice on the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, as required by Section 19A of the 1988 Act.

9. The Legal member therefore concludes 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.

J Bonnar

Josephine Bonnar
Legal Member
12 February 2021