



**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 Rules")**

in connection with

2/1 2033 Dumbarton Road, Glasgow ("the property")

Case Reference: FTS/HPC/EV/22/2137

Leanne Keegan, 9 Barra Gardens, Old Kilpatrick ("the Applicant")

Tanya Hayes, 2/1 2033 Dumbarton Road, Glasgow ("the Respondent")

1. The Applicant lodged an application seeking an order for possession of the property in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A one page tenancy agreement, Notice to Quit, Section 33 notice and AT6 Notice were lodged in support of the application. The application form indicated that possession is sought on ground 8 of Schedule 5 of the 1988 Act. The Notice to Quit is dated 2 June 2022 and calls upon the Respondent to vacate the property on 20 June 2022.
2. Following a request for further information, the Applicant confirmed that she wished to proceed under Rule 65 and not Rule 66. She lodged further documents, including the second page of the tenancy agreement.

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".

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 6 months from 30 April 2014. There is no provision for the tenancy to continue on a month to month basis after the initial term, or otherwise. It therefore appears that the tenancy has continued by tacit relocation, with an ish on the 30 October and 30 April each year. The Notice to Quit which has been lodged with the application purports to terminate the tenancy contract on 20 June 2022 which is not an ish. The Legal Member also noted that the Notice to Quit does not comply with Section 112 of the Rent Scotland Act 1984. This states,- "No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwellinghouse shall be valid unless it is in writing and **contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.**" Section 2 of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ("the 1988 Regulations") states **"Where a notice to quit is given by a landlord to terminate an assured tenancy under the Housing (Scotland) Act 1988 that notice shall contain the information set out in the Schedule to these Regulations."** The Schedule states "INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT. 1. Even after the Notice to Quit has run out, before the tenant can be lawfully evicted, the landlord must get an order for possession from the court." 2. If a landlord issues a notice to quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter. 3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the legal aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre." The notice to quit lodged with the application does not give 4 weeks notice or contain the prescribed information. It does not specify a date which coincides with an ish date. The Legal Member is satisfied that the Notice is not valid

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.** Clause 1 of page 2 of the tenancy agreement lodged by the Applicant states that the tenancy can be brought to an end “in any of the circumstances set out in grounds 2, 8 or 9 to 17 inclusive in schedule 5” of the 1988 Act. However, in *Royal Bank of Scotland v Boyle* 1999 HousLR, it was held that where an invalid Notice to Quit had been served, and the Pursuer sought to rely on Section 18(6) of the Act, “(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate”. The tenancy agreement lodged does not contain the “essential ingredients” of ground 8. The Legal Member is therefore satisfied that Section 18(6) does not apply and that the Applicant cannot seek possession of the property without a serving a valid notice to quit.

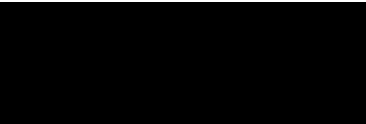
8. As the Applicant cannot seek an order for possession without first terminating the tenancy contract, and as the Notice to Quit which has been lodged is invalid, the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on 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.



Josephine Bonnar
Legal Member
7 September 2022