



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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 Procedural Rules")

in connection with

2 Belvidere Crown Wynd, Auchterarder, PH3 1AE ("the Property")

Case Reference: FTS/HPC/EV/19/2603

Miss Penelope Claire Stoddard ("the Applicant")

Mr Andrew Donaldson ("the Respondent")

McCash and Hunter, solicitors ("the Applicant's Representative")

1. On 20 August 2019, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules, being an order for possession under section 33 of the Housing (Scotland) Act 1988. The following documents have been provided in support of the application:-

- Copy tenancy agreement
- Copy Form AT5
- Copy Notice to Quit
- Copy Section 33 Notice

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- Copy Section 11 Notice
- Copy AT6

DECISION

1. I considered the application in terms of Rule 8 of the 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."

2. 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 appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

3. '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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
4. Section 33 of the Housing (Scotland) Act 1988 provides a basis for recovery of possession of properties let on Short Assured Tenancies. In terms of subsection (1), the Tribunal must be satisfied of three things:- (i) that the short assured tenancy has reached its term (that is to say, its natural expiry); (ii) that tacit relocation is not operating; and (iii) that the landlord has given notice to the tenant stating that he requires possession of the property.
5. In this case, the tenancy agreement commenced on 13 September 2017 and had an initial term of one year and one day, ending on 14 September 2018. Thereafter, in terms of clause 5 of the tenancy agreement, it continued bi-monthly (which is to say, for periods of two calendar months) by tacit relocation.
6. The purpose of a notice to quit is to stop tacit relocation from operating. It

cannot bring a tenancy to an end at a date arbitrarily selected. To be effective, the end date specified in a notice to quit must coincide with the ish date. In this case, there would be six potential ish dates each year: the fourteenth day of September, November, January, March, May or July. To be effective, the notice to quit in this case would have had to specify one of those dates and provide the required period of notice, which in terms of clause 34.1 of the tenancy agreement was two months.

7. In fact, the notice to quit specified that the contractual tenancy would end on 7 August 2019. 7 August 2019 was not an ish date, for the reasons previously stated. As such, it is my view that the notice to quit given to the respondent in this case is invalid. That being so, the contractual tenancy has continued by tacit relocation. It follows that the requirements of section 33 of the Housing (Scotland) Act 1988 have not been met.
8. Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and, separately, that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.
9. As an observation, even if the Notice to Quit was valid (which it is not), I would still have refused this application. That is because the section 33 notice which was served on the Respondent is also invalid. The notice in terms of section 33 of the Housing (Scotland) Act 1988 requires that a landlord gives at least two months' written notice of the requirement for possession of a property let on a Short Assured Tenancy. Whilst the section 33 notice lodged with the application gives written notice of the requirement for possession, it does not specify when possession is required. As such, the Respondent did not, in my view, receive notice of when possession would be sought under section 33 of the 1988 Act. The notice must expressly state the date upon which possession is required. It is only then that the period of notice can be

calculated to determine compliance with section 33.

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.

Andrew Upton

Andrew Upton
Legal Member
14 October 2019
