

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/2820**

**Re: 5 Salton Crescent, Dundee, DD4 0JY ("the Property")**

**Parties:**

**Mrs Eve Gdula ("the Applicant")**

**MS Jeanne Rooney ("the 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 under Rule 65 on 22 October 2018. The grounds for possession/eviction were Grounds 8,11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988. The following documents were enclosed with the application:
  - (i) Tenancy Agreement dated 5 July 2017 in respect of the Property which stated it was for a period of 6 months from 1 July 2017 until 1 January 2018;
  - (ii) Section 11 Notice;
  - (iii) AT6 dated 14 September 2018;



- (iv) Notice to Quit dated 6 August 2018 which stated the Respondent had to remove by 16 September 2018 and also stated that the Applicant required vacant possession and would apply for an order for possession not earlier than 21 August 2018;
  - (v) 2 x Certificate of Service of AT6;
  - (vi) Rental Statements; and
  - (vii) Mandate from John Gdula.
2. On 5 December 2018 the application was considered by the Tribunal. By Letter of the same date the Applicant was requested to provide the following information:
- (a) The Grounds for repossession relied upon did not appear in the tenancy agreement. In order to proceed the contractual tenancy required to be terminated by a valid Notice to Quit;
  - (b) The Notice to Quit specified an end date of 16 September 2018. The tenancy was for a fixed 6 month period 1 July to 1 January. Tacit relocation appeared to apply. The Applicant's explanation was sought on this point.
3. The Applicant was advised that if he did not provide the information by 19 December 2018 then the application may be rejected.
4. The Applicant responded by email of 6 December 2018 in which it was advised that the tenancy could be terminated by an AT6 and that the Grounds in Schedule 5 were incorporated by implication. It was further submitted that a Notice to Quit was irrelevant and there was no legal need to issue one.

### **Reasons for Decision**

5. 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."*

6. '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*".



7. **Royal Bank of Scotland v Boyle 1999 Hous L R 63** clearly states that a lease must clearly specify the ground being used under the 1988 Act to allow an order for repossession to be granted when using only the AT6 route. In this case the Grounds have not been so specified and the tenancy cannot lawfully be terminated and the order for repossession granted by using an AT6 alone. The contractual tenancy would firstly require to be lawfully terminated and then an order for recovery of possession could be granted following service of an AT6.
8. In this case the tenancy has continued for 6 month periods under tacit relocation. To be lawfully terminated any Notice must end at the "ish" of the tenancy. The Notice to Quit served on 6 August specified 16 September 2018 as the termination of the tenancy. The Notice is accordingly invalid. The contractual tenancy subsists. The Tribunal could not grant the order sought.
9. 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.

  
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Legal Member/Chair

71 December 2018  
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Date