

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS 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

38/4 North Street, Cambuskenneth, Stirling, FK8 5NB

Case Reference: FTS/HPC/EV/20/0538

**JOHN MACDONALD, 7 Westerton Road, Dullatur, North Lanarkshire, G68 0FF ("the
Applicant")**

(1) JAMES LAWSON, 12 Braeside, Alloa, Clackmannanshire, FK10 3DR

(2) MELANIE JAFFRAY, 14 Douglas Drive, Broombridge, FK7 7RN ("the Respondents")

BACKGROUND

1. On 14 February 2020 the Applicant lodged an application for eviction of the Respondents from the property 38/4 North Street, Cambuskenneth, Stirling, FK8 5NB ('the property'). The application was made in terms of section 33 of the Housing (Scotland) Act 1988. The application was based on the short assured tenancy agreement between the parties for the property having come to an end. With the application the Applicant enclosed a copy of a purported notice to quit dated 10 December 2019.

DECISION

2. For the reasons given below this application is rejected.

REASONS FOR DECISION

3. 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; . . .

(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. For the purposes of this rule the word 'frivolous' does not have its ordinary day-to-day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.

5. This application was made under section 33 of the Housing (Scotland) Act 1988. Section 33(1)(b) requires the Tribunal to be satisfied that tacit relocation (automatic re-lease) is not operating. That is one of the requirements for an eviction order.
6. In order to prevent tacit relocation from operating a valid notice to quit must be served on the tenants. A valid notice requires the tenants to remove by no later than the last date of the tenancy ('the ish date'). If no valid notice to quit is given, then the tenancy automatically renews itself for its term. The first ish date in the short assured tenancy in the current case was 3 January 2016. Given that by virtue of clause 1 of the tenancy agreement the lease continued on a monthly basis, the subsequent ish dates have all been the third day of each month. In the notice to quit dated 10 December 2019 the Applicant required the Respondents to remove from the property by 11 February 2020.
7. As at 11 February 2020, however, the Respondents were entitled to continue to occupy the property until 3 March 2020. That entitlement occurred through the tacit relocation that took place on 3 February 2020. It follows from this that the notice required the Respondents to remove from the property prematurely. The notice to quit was therefore invalid. It did not prevent the operation of tacit relocation (automatic re-lease).
8. It follows that the Tribunal cannot be satisfied that an essential requirement for an eviction order under section 33 has been satisfied. In those circumstances, there being no valid notice to quit the current application is misconceived and doomed to fail. A similar difficulty affects the section 33(1)(d) notice.
9. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' in its legal meaning for the purposes of rule 8(1)(a) of the Procedural Rules. In addition under rule 8(1)(c) and on the same basis I have good reason to believe that it would not be appropriate to accept this application and send it to a case management discussion for further consideration. The application must therefore be rejected.

What you should do now

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.



David Bartos
Legal Member acting under delegated powers
19 March 2020