



**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

8 Garden Street, Coalburn, ML11 0LJ ("the property")

Case Reference: FTS/HPC/EV/22/3688

Colin McCormick, 14 Lythgow Way, Lanark ("the Applicant")

Steven Weir, 8 Garden Street, Coalburn, ML11 0LJ ("the Respondent")

1. The Applicant seeks 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 related application under Rule 65 was also lodged. A tenancy agreement, Notice to Quit, and section 33 Notice were lodged in support of the application. The Notice to Quit calls upon the Respondent to vacate the property on 13 June 2022..
2. The Tribunal issued a request for further information regarding the validity of the Notice to Quit and also asked the Applicant to provide a copy of the AT5 notice which had been given to the tenant before the creation of the tenancy. The Tribunal noted that the tenancy agreement had a start date (14 December 2015) but no end date and no specified term. The Applicant was asked to clarify the basis upon which the tenant could be called on to vacate property on 13 June 2022. The Applicant provided a response but did not address the issue of the validity of the Notice. He also stated that the tenancy is an assured tenancy and not a short assured tenancy, so no AT5 Notice had been issued.

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".

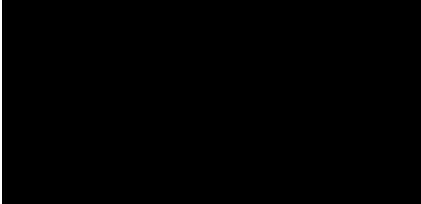
6. The Applicant seeks recovery of possession of a short assured tenancy. The tenancy agreement lodged with the application states that the term of the tenancy is from 12 noon on 14 December 2015 to 12 noon on.... There is a space on the agreement for a second date but no date or term has been specified. In the absence of an agreed term, the term of one year is usually implied. It therefore appears that the tenancy has continued by tacit relocation with an ish on the 14 December each year. The Notice to Quit calls upon the Respondent to vacate the property on 13 June 2022, which is not an ish. As a landlord cannot terminate the tenancy contract before the ish date, the Legal Member is satisfied that the Notice is invalid.
7. Before an order for possession can be granted by the Tribunal in terms of Section 33 of the 1988 Act, the tenancy contract between the parties must be terminated by service of a valid Notice to Quit. This is to prevent tacit relocation operating, as required by Section 33(b). As the Applicant has not served the Respondent with a valid Notice to Quit, the application for an order for possession cannot succeed.
8. The Legal Member also notes that the Applicant may not be entitled to seek recovery of the property in terms of Section 33. Although the tenancy is described as a short assured tenancy, and although there is reference in the agreement to an AT5, the Applicant has stated that the tenancy is an assured tenancy and that no AT5 Notice was given. In terms of Section 32 (1) (b) a tenancy is not a short assured tenancy unless an AT5 Notice has been served. As section 33 only applies to short assured tenancies, the application cannot succeed.
9. As the tenancy is not a short assured tenancy, and as the Applicant cannot seek an order for possession without first terminating the tenancy contract, 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.



Legal Member
17 March 2023