

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

12 Ballencrieff Mill, Bathgate, West Lothian EH48 4LL

Case Reference: FTS/HPC/EV/20/1666

MISS RUBY BEATTIE ("the Applicant")

MS FLORENCE SPEEDIE ("the Respondent")

1. On 6th August 2020, an application was received from the Applicant. The application was made under Rule 66 of the Rules being an application by a private landlord for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
 - (a) Copy Short Assured Tenancy Agreement;
 - (b) Copy Form AT5
 - (c) Copy Notice to Quit;
 - (d) Copy Section 33 notice;
 - (e) Copy Section 11 notice.

No proof of service of any of these documents was provided.

DECISION

2. I 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."

3. 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 is frivolous within the meaning of Rule 8(1)(a) of the Rules.

REASONS FOR DECISION

4. '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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
5. The notice to quit, which is dated 20th March 2020, is invalid in respect that it specifies a date to leave the premises of 20th May 2020. That termination date is not an *ish* of the tenancy agreement, as that date is required to be in order to constitute an effective notice. The Short Assured Tenancy Agreement provides at paragraph 4 that the tenancy will end on Friday 19th April 2019. If the agreement is not brought to an end by either party on that date, then paragraph 4 goes on to provide that it will continue thereafter on a monthly basis until terminated by either party giving no less than 2 months written notice to the other party. Accordingly, as the agreement was not brought to an end on the 19th April 2019, it continued thereafter to the 19th day of the following month, and from month to month thereafter. That being so, as the *ish* of the lease falls on the 19th day of each month, the notice to quit by the 20th day of May 2020 (which is not an *ish* date) is ineffectual.

6. The notice to quit required to end the lease on a date which is an *ish* of the lease, but the date specified of 20th May 2020 was not an *ish* of the lease (see *Rennie & Ors. – Leases S.U.L.I.* (1st Ed.) paragraphs 22-46 to 22-49, *Gloag & Henderson – The Law of Scotland* (14th Ed.) paragraph 35-25 and 35-26, and section 38 of the *Sheriff Courts (Scotland) Act 1907*). Upon that basis, the notice to quit is invalid.
7. A further defect in the notice to quit which arguably might render it invalid, is that it fails to include the prescribed information set out in paragraph 2 of Schedule 1 to the *Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988* as amended, as the information set out in paragraph 1 which is included is a version of that information contained in a prior version of the legislation. The notice to quit is arguably invalid on that basis also (see *Rennie & Ors. – Leases S.U.L.I.* (1st Ed.) paragraphs 22-47). In circumstances where the notice to quit is invalid upon the basis that it does not specify an *ish* date of the lease, the Tribunal does not require to determine the question of whether the defect in the prescribed information is sufficient to render the notice invalid.
8. The Tribunal observes that no proof of service has been provided. In relation to the section 33 notice, dated 20th March 2020, it too gives notice that the tenant must surrender vacant possession by 20th May 2020. Unless the section 33 notice was served on the tenant on the 20th March 2020, insufficient notice would have been given. It may be that the notice was served on the tenant on 20th May 2020, in which case sufficient notice would have been given.
9. For the above reason, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

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.

Neil Kinnear
Legal Member
27th August 2020

