



**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/20/1968**

**Re: 109 Patrickholme Avenue, Stonehouse, ML9 3JS ("the Property")**

### **Parties**

**Mr Richard Whitecross (Applicant)**  
**Mr Robert Whitecross (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 66 dated 14 September 2020. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The following documents were enclosed with the application:

- (i) SAT commencing 28 March to 28 September 2008 and continuing monthly thereafter;
- (ii) Notice to Quit dated 13 July 2020 which specified 13 September 2020 as the date to quit;
- (iii) AT5 dated 27 March 2008;
- (iv) Tenant's confirmation of receipt of Notice to Quit;
- (v) Copy email to local authority (undated).

2. The application was considered by the Tribunal and further information was requested by letter of 25 September 2020 as follows:

*“Before a decision can be made, we need you to provide us with the following:*

*I refer to your recent application a Legal member has considered it and has asked that you clarify the following points:-*

*1. It is noted that the applicant is a joint Landlord with Christine Whitecross and that you are both owners of the Property can you advise if Mrs Whitecross should be added as an applicant and if not can you please provide her written consent to these proceedings.*

*2. It is also noted that the application has been raised against Mr Robert Whitecross only however there appears to be a joint tenant named in the lease namely Ms Kirsty Ward do you wish to add her as a Respondent or can you advise if she has left the Property?*

*3. With regard to the Notice to quit it asks the tenant to leave on 13th September 2020 which does not appear to be an ish date or anniversary of the original termination date in the lease which is 28th September. Can you please advise why in this circumstances you believe the Notice to Quit is valid?*

*4. In addition due to the changes effected by the Coronavirus (Scotland) Act 2020 and in particular Schedule 1 paragraph 4(3), the application appears to be made prematurely as the notice period for a section 33 notice now has to be 6 months’ notice and not two months. Can you please advise how you believe the action is competent if the required 6 months’ notice has not yet expired?*

*5. Finally any application for eviction requires to be accompanied by a notice given to the local authority under S11 of the Homelessness etc (Scotland) Act 2003. Can you please advise if you served one on the local authority and if you wish to proceed with this application can you please let us have a copy of this and evidence of service of it. I appreciate these comments involve consideration of legal matters and you may wish to seek independent legal advice before responding.*

*Please reply to this office with the necessary information by 9 October 2020. If we do not hear from you within this time, the President may decide to reject the application.”*

3. The Applicant responded on 5 October 2020 informing the Tribunal:

“Regarding your email communication dated 25th Sep 2020 (Ref: FTS/HPC/EV/20/1968) requesting further information, our response is as follows:

1. Please add Mrs Christine Whitecross as a joint applicant. Do you require an amended application?

2. Ms Kirsty Ward is no longer at the premises.

3. We were not aware that the notice quit date had to be in line with an anniversary date such as 28th Sep 2020. If required we can move to this monthly anniversary date. It should also be noted that the tenant has not paid

any rent since 25th June 2020 which now as of this date is over 3 months in arrears.

4. We were not aware that the Coronavirus (Scotland) Act 2020 Schedule 1 paragraph 4(3) applied for Short Assured Tenancy. “

5. We had telephone discussions with Sarah Watson (Housing) South Lanarkshire Council sarah.watson@southlanarkshire.gov.uk around the time of notification. In addition we have given formal notification to housing.larkhall@southlanarkshire.gov.uk on 29th Sep 2020 as per attached email.”

A copy of the email to South Lanarkshire Council was produced and was as follows:

*“From: Ricky@WXSolutionsLtd.com*

*To: [housing.larkhall@southlanarkshire.gov.uk](mailto:housing.larkhall@southlanarkshire.gov.uk)*

*Cc: [chris@wxolutionsltd.com](mailto:chris@wxolutionsltd.com)*

*Subject: notice by the landlord to the local authority under section 11 of the Homelessness (Scotland) Act 2003*

*To whom it may concern,*

*This email and its contents are provide to confirm notice by the landlord to the local authority under section 11 of the Homelessness (Scotland) Act 2003 as required by RULE 66: Housing (Scotland) Act 1988 (“the 1988 Act”) (Possession on Termination of Short Assured Tenancy).*

*Attachments: The tenancy agreement The notice by landlord that the tenancy is a short assured tenancy (“AT5”) The Notice to Quit.”*

No copy of the section 11 Notification was produced.

## **Reasons for Decision**

4. 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.”*

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. 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*".

6. The application seeks to proceed under Rule 66 and section 33 of the Act. In order to do so the tenancy must have been a Short Assured Tenancy (**SAT**), validly terminated and tacit relocation not be operating.

The Applicant has not produced a section 33 Notice or proof of service of this on the tenant.

In terms of section 11 of the Homelessness etc. (Scotland) Act 2003 a Notice in the prescribed form must be served on the local authority:

**"11 Notice to local authorities of proceedings for possession and enforcement of standard securities**

(1)Where a landlord raises proceedings for possession of a dwellinghouse, the landlord must give notice of the raising of the proceedings to the local authority in whose area the dwellinghouse is situated, unless the landlord—

(a)is the local authority, or

(b)is required to give such notice to the local authority under any other enactment.

(2)The schedule to this Act (which makes modifications of enactments for the purpose of requiring that local authorities are given notice of certain proceedings for possession of houses and of steps taken to enforce certain standard securities) has effect.

(3)The Scottish Ministers may by regulations made by statutory instrument prescribe—

(a)the forms of notices to be given under subsection (1) and under the enactments specified in subsection

(5) (which include the enactments modified by the schedule to this Act), and

(b)the manner in which such notices are to be given."

No such Notice has been produced.

Furthermore, the Notice to Quit purports to terminate the tenancy as at 13 September. The ish date is 28<sup>th</sup> of the month. The tenancy has not been validly terminated and continues. As the tenancy has not been terminated the Tribunal cannot grant the order sought. Furthermore, as no section 11 Notice has been served the Tribunal cannot grant the order sought.

7. In light of the above reasons the Tribunal cannot grant the order sought. 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.**



**Alan Strain**

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**Legal Member/Chair**

**15 October 2020**

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**Date**