



**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

1 Park Gardens, Wallyford EH21 8DB

Case Reference: FTS/HPC/EV/20/2676

LANA GROOM ("the Applicant")

GILLIAN TOAL ("the Respondent")

1. An application dated 18th December 2020 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.

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 2nd September 2020, is invalid in respect that it specifies a date to leave the premises of 21st December 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 Clause 3 that the tenancy "will end on: 22nd April 2012 ("The end Date")". It goes on to provide that "If the agreement is not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until ended by either party." Accordingly, as the agreement was not brought to an end on 22nd April 2012, the agreement continued on a monthly basis. That being so, the *ish* of the lease falls on the 22nd day of each month after 22nd April 2012, and the notice to quit on 21st December 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 21st December 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. Further, the section 33 notice specifies that the landlord requires vacant possession as at 21st December 2020. In the event that the notice to quit was valid (which it is

not), then the Applicant required to give six months' notice in terms of section 33 of the *Housing (Scotland) Act 1988* as amended by the *Coronavirus (Scotland) Act 2020*. As the notice is dated three days before the date when vacant possession is sought, the notice is invalid.

8. The Tribunal observes that the Applicant has not provided proof of service of the notice to quit, section 33 notice, or the section 11 notice, and the Application is dated three days before the dates given to remove in the notice to quit and section 33 notices. These are further reasons why this application has no prospect of success.

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
14th January 2021