



**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

23G John Street, Helensburgh G84 8XL

Case Reference: FTS/HPC/EV/21/1227

KA YU CHENG ("the Applicant")

ELIZABETH MOELETSI ("the Respondent")

1. An undated application was received from the Applicant by the Tribunal on 21st May 2021. 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;

(f) Various proofs of service.

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 October 2020, is invalid in respect that it specifies a date to leave the premises "by 1st May 2021". 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 2 that "The period let shall be from SECOND DAY of MAY TWO THOUSAND AND EIGHT (the date of entry) until the SECOND DAY of NOVEMBER TWO THOUSAND AND EIGHT (Six Months) and monthly thereafter until terminated in the manner hereinafter expressed... It should be clearly understood by the tenant that on receipt of notice of termination of Lease, the Tenant must vacate the premises on the specified date of termination." Accordingly, as the agreement was not brought to an end on 2nd November 2008, the agreement continued on a monthly basis. That being so, the *ish* of the lease falls on the 2nd day of each month after 2nd November 2008, and the notice to quit and vacate the premises by 1st May 2021 (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 1st May 2021 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, *Stalker – Evictions in Scotland* (2nd Ed.)

pages 58-60, and section 38 of the *Sheriff Courts (Scotland) Act 1907*). Upon that basis, the notice to quit is invalid.

7. 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.

N Kinnear

Neil Kinnear
Legal Member
7th June 2021