



**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

7C South Hamilton Road, North Berwick, East Lothian EH39 4NJ

Case Reference: FTS/HPC/EV/22/0747

LINDA MCDONALD ("the Applicant")

ROCINE MORLEY ("the Respondent")

1. An application dated 14th March 2022 was received from the Applicant by the Tribunal. The application was made under Rule 65 of the Rules being an application for order for possession in relation to assured tenancies. The following documents were enclosed with the application:-
 - (a) Copy Short Assured Tenancy Agreement;
 - (b) Copy Form AT5;
 - (c) Copy Notice to Quit/Section 33 notice;
 - (e) Copy Section 11 notice;
 - (f) Various other documents.

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/section 33 notice, which is dated 8th December 2021, is invalid in respect that it specifies a date to leave the premises of 12th March 2022. 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 1.4 that the tenancy started on 1st November 2011, and that the initial period of the tenancy is for six months from the start of the tenancy until 1st May 2012. That clause goes on to narrate that "Unless the landlord or the tenant has brought the tenancy to an end at, or before, the end of the initial period, the tenancy will continue thereafter on a month to month basis...". Accordingly, as the agreement was not brought to an end on 1st May 2012, the agreement continued on a monthly basis. That being so, the *ish* of the lease falls on the 1st day of each month after 1st May 2021, and the notice to quit and vacate the premises by 12th March 2022 (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 12th March 2022 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. Further, the notice to quit is invalid in terms of section 112 of the *Rent (Scotland) Act 1984*, as 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 (see *Rennie & Ors. – Leases S.U.L.I. (1st Ed.)* paragraphs 22-47).

8. That being so, the tenancy has not been validly terminated by the landlord, and 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
9th June 2022