



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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

103 Baldwin Avenue, Glasgow ("the property")

Case Reference: FTS/HPC/EV/20/1290

John Deans, 11 Helensburgh Drive, Glasgow ("the Applicant")

Tracy Docherty, 103 Baldwin Avenue, Glasgow ("the Respondent")

1. By application received on 15 June 2020 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged documents in support of the application including copy short assured tenancy agreement, AT5 Notice, Notice to Quit and section 33 Notice. The Notice to Quit states " By law I am required to inform you that should you not vacate the premises by the required date that to gain possession of the leased property specified in this notice to Quit I must, - Serve on you a Notice to Quit (this document), A section 33 Notice giving notice that I require you to vacate the premises (issued with this document), obtain an order for possession from the courts. If you are uncertain about what this notice means or if you have any doubts about anything in it then you should immediately consult a solicitor or the citizens advice bureau". In terms of the application the Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").

2. On 25 June and 6 August 2020, the Tribunal wrote to the Applicant. The Applicant was asked to clarify the validity of the Notice to Quit as it does not appear to contain the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (“the 1988 Regulations”). No response was received to either letter.

DECISION

3. The Legal Member 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.”

4. **After consideration of the application and documents lodged in support of same the Legal Member considers 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.**

Reasons for 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 LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The application lodged with the Tribunal seeks recovery of possession of a short assured tenancy in terms of Section 33 of the 1988 Act. Section 33 states(1) states " Without prejudice to any right of a landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with Sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its end, (b) that tacit relocation is not operating and (d) the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house."
7. To prevent tacit relocation from operating a Notice to Quit must be issued to the tenant. Section 112 of the Rent (Scotland) Act 1984 ("the 1984 Act") states, "No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwellinghouse shall be valid unless it is in writing and **contains such information as may be prescribed** and is given not less than four weeks before the date on which it is to take effect." Section 2 of the 1988 Regulations states "**Where a notice to quit is given by a landlord to terminate an assured tenancy under the Housing (Scotland) Act 1988 that notice shall contain the information set out in the Schedule to these Regulations.**" The Schedule states "INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT. 1. Even after the Notice to Quit has run out, before the tenant can be lawfully evicted, the landlord must get an order for possession from the court." 2. If a landlord issues a notice to quit but

does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter. 3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the legal aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre.”

8. The Notice to Quit lodged with the application does not contain all of the information prescribed by the 1988 Regulations. In particular, some of the information contained in parts 1 and 3 of the Schedule is absent from the Notice. All of the information in Part 2 of the Schedule is absent. As a result the Notice does not comply with Section 112 of the 1984 Act. The Notice is therefore invalid and the tenancy contract has not been terminated. Accordingly, the Applicant has not complied with the requirements of Section 33 of the 1988 Act.
9. The Legal Member concludes that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.

A black rectangular box redacting the signature of Josephine Bonnar.

Josephine Bonnar
Legal Member
2 September 2020