



**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 Procedure Rules")**

in connection with

91 Kirkwood Place, Coatbridge ("the property")

Case Reference: FTS/HPC/EV/20/2414

Tahir Jamshid, 1 Bishopburn Drive, Coatbridge ("the Applicant")

Howard McDonald, Cynthia McDonald, 91 Kirkwood Place, Coatbridge ("the Respondents")

1. By application received on 18 November 2020, the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Procedure Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged documents in support of the application including copy tenancy agreement, Notice in terms of Section 33 of the 1988 Act and Notice to Quit.
2. The Tribunal issued requests for further information to the Applicant on 2 and 23 December 2020, 21 January, 17 February and 17 March 2021. In each of the requests the Applicant was directed to provide a copy of the AT5 Notice for the short assured tenancy, evidence of service of the Notice to Quit and Section 33 Notice and a copy of the Section 11 Notice sent to the local authority in terms of the Homelessness etc (Scotland) Act 2003. The Applicant has responded to some of the letters but has failed to provide any of the documents requested.

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. Rule 66 of the Procedure Rules states that an application lodged in terms of this Rule must be accompanied by " (ii) the notice by the landlord that the tenancy is a short assured tenancy" (the AT5 Notice) and "(v) a copy of the notice by the landlord given to the local authority..." (the Section 11 Notice). In terms of Rule 5(1) of the Procedure Rules, these are mandatory requirements and the application cannot be accepted if they are not provided. The Applicant has been directed to provide these documents by the Tribunal on several occasions and has failed to do so.
7. The application seeks an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the 1988 Act. A tenancy is a only a short assured tenancy if an AT5 Notice was issued to the tenants before the tenancy was signed (Section 32(b) of the 1988 Act). A Landlord therefore has to provide the Tribunal with evidence that this Notice was served. The Applicant has failed to provide a copy of the relevant notice or evidence that it was issued to the Respondents. Furthermore, although the Applicant has provided a copy of a Notice to Quit and Notice in terms of Section 33 of the 1988 Act, which are required to establish that the Applicant has complied with Section 33, the Applicant has failed to provide evidence that these Notices were served on the Respondents by one of the methods specified in Section 54 of the 1988 Act. The Applicant has also failed to provide evidence of the date of service which is required to establish whether the correct period of notice has been given. Lastly, the Applicant has failed to provide a copy of a section 11 notice sent to the local authority, as required by Section 19A of the 1988 Act.
8. The Applicant has failed to comply with Rules 5(1) and 66 of the Procedure Rules by failing to provide copies of required documents. The Applicant has also failed to comply with Rule 5(3), by failing to provide these documents in response to letters from the Tribunal directing him to do so. Furthermore, the Applicant has failed to provide evidence that the tenancy is a short assured tenancy, a section 11 Notice and evidence of service of the Notice to Quit and

Section 11 Notice on the Respondents. The Legal Member therefore 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.

Josephine Bonnar
Legal Member
14 April 2021