



**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

30 Shore Street, Inverness ("the property")

Case Reference: FTS/HPC/EV/20/2043

Thomas Stuart Brown, 9 Glenburn Drive, Inverness ("the Applicant")

Jose Lago Entenza, 30 Shore Street, Inverness ("the Respondent")

1. By application received on 25 September 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 tenancy agreement, Notice to Quit and Section 33 Notice. The Notice to Quit does not stipulate a date upon which the Respondent is to vacate the property. The Section 33 Notice states that the Respondent is to vacate the property on 10 June 2020. No information or evidence is provided regarding service on the Notices on the Respondent. 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 12 October and 9 November 2020 the Tribunal issued letters to the Applicant requiring him to provide a copy of the AT5 Notice issued in connection with the tenancy, evidence of service of the Notices and to clarify the basis upon which the Tribunal could consider the application as the Notice

to Quit appeared to be invalid. 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 Legal Member notes that the Applicant has not provided a copy of the AT5 Notice. In the absence of this, or other evidence that a valid AT5 was issued to the Respondent, the Applicant cannot establish that the tenancy is a short assured tenancy in terms of Section 32 of the 1988 Act and is not be entitled to seek recovery of possession under Section 33.
7. 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 ish, (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." To prevent tacit relocation from operating the Landlord must terminate the tenancy contract at the ish date of the tenancy by serving a Notice to Quit. The Notice to Quit which has been lodged does not stipulate the date upon which it is to take effect and therefore does not comply with Sections 33(a) and (b) of the 1988 Act.
8. The Legal Member proceeded to consider whether the Section 33 Notice lodged with the application could be considered as a combined Notice to Quit and Section 33 Notice, as it specifies a date (10 May 2020) and contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. However the term specified in the tenancy document which has been lodged is six months from 10 June 2015 until 9 December 2015. There is no specific provision for it to continue on a monthly basis or otherwise. It therefore appears that the tenancy has continued by tacit relocation for further 6 month terms with an ish on 9 June and 9 December each year. A Notice to Quit can only terminate a tenancy contract at the ish. The date specified in the Section 33 Notice is not an ish. As a result

this Notice is not a valid Notice to Quit 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 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

Josephine Bonnar
Legal Member
26 November 2020