



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.**

In respect of application by Mr Nigel Tickell in terms of Rule 66 of the Rules.

**Case reference FTS/HPC/EV/19/2123**

At Glasgow on the 5 August 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Mr Nigel Tickell the owner and landlord of the property at 2/1 87 Causeyside Street Paisley PA1 1TU 'the property', for recovery of possession of the property in terms of Rule 66.
2. The application was dated 4 July 2019 and was stamped as being received by the Tribunal on 8 July 2019.
3. The application was accompanied by the following:-
  1. Tenancy agreement for let of the property from 15 May 2015 until 14 November 2015 and month to month thereafter.
  2. Notice to quit dated 24 April 2019.
  3. S33 notice.

4. The tribunal wrote to the applicant on 10 July 2019 asking for the AT5 and the letter to the local authority in terms of s11 of the Homelessness Etc (Scotland's) Act 2003. The s11 letter was provided on 19 July 2019. It was incorrectly completed as the box titled "other proceedings for possession of a dwellinghouse " was ticked. A further copy of the tenancy agreement was produced but no AT5 was produced.
5. The lack of an AT 5 is a serious problem as the tribunal cannot be satisfied that the tenancy entered into was a short assured tenancy. The tenancy agreement exhibited makes reference to it being a "short assured tenancy" but there is no reference in the agreement to an AT5 having being signed before the tenancy agreement was entered into.
6. There is a further more fundamental problem with this application which relates to the notice to quit. I have considered the notice to quit carefully and considered whether the notice to quit meets the legal requirements of such a notice. I consider that the notice to quit issued here is invalid. The notice to quit does not tie in with the 'ish' date provided for in the tenancy agreement. The agreement provides for an initial term of 6 months from 15 May 2015 until 14 November 2015 and month to month thereafter. The ish must therefore be on or around the 14<sup>th</sup> of the month. The notice to quit lodged gives an ish date of 30 June 2019. Stalker in Evictions in Scotland at page 35 states:  
*If the date stated on the notice to quit is earlier than the ish, the notice is ineffective; the landlord cannot call on the tenant to leave before the tenant is contractually bound to do so. If the date stated on the notice is later than the ish date the notice is similarly ineffective to prevent tacit relocation occurring at the ish.*  
 I consider the notice to quit to be ineffective and invalid. \the notice to quit does not tie in with the ish date and it does not therefore prevent tacit relation from taking place.
7. There are further problems with the application which could possibly have been addressed by the applicant if the notice to quit had been valid:
  1. There is no proof of service of the notice to quit or the s33 notice on the tenant.
  2. The s33 notice is unsigned and also makes reference to the ish date of 30 June 2019. The s33 notice also refers to the tenancy as commencing on 23 February 2015.
  3. The s11 notice is incorrect as noted above.
  4. There is no AT5 and the tenancy agreement makes no reference to the AT 5 as noted above.
8. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if "**they consider that an application is vexatious or frivolous**".
9. "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".

**10.** I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. It is incomplete and there is a fundamental defect with the notice to quit. Even if the other items referred to at 7 above were produced to the satisfaction of the tribunal the application would have no reasonable prospects of success.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Ward

Lesley Anne Ward 

Legal Member