



**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

77B Nelson Street, Largs ("the Property")

Case Reference: FTS/HPC/EV/21/2189

John Caven, 28 Parklands, Coylton ("the Applicant")

Frank Hodgart, 77B Nelson Street, Largs ("the Respondent")

1. The Applicant lodged an application for an order for possession in terms of Rule 66 of the Procedure Rules. A tenancy agreement, Notice to Quit and Section 33 Notice were lodged in support of the application. The tenancy agreement states that the term of the tenancy is 20 June 2016 until 20 June 2017. The Notice to Quit lodged with the application stipulates that the Respondent is to vacate the property on 20 August 2021.
2. The Tribunal issued a further request for information to the Applicant. The Applicant was asked to explain the basis upon which the Tribunal could consider the application as the Notice to Quit appeared to be invalid. The Applicant was advised that the date specified in the Notice did not appear to coincide with an end of the tenancy. In his response, the Applicant's representative stated that the Notice to Quit was valid. He indicated that the tenancy was a short assured tenancy, that the sole purpose of the Notice to Quit was to prevent tacit relocation from operating, and that his usual practice was to specify the same date as is stipulated in the Section 33 Notice. The

representative also referred to Section 33 of the 1988 Act, the Sheriff Court (Scotland) Act 1907, the Rent (Scotland) Act 1984 and the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.

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 an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the Housing (Scotland) 1988 Act. Section 33 (as amended by the Coronavirus (Scotland) Act 2020) 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 may 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 (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; and (e) that it is reasonable to make an order for possession ." In order to comply with subsections (a) and (b), a landlord must serve a valid Notice to Quit which terminates the tenancy contract and prevents tacit relocation from operating. .
7. The term of the tenancy stipulated in the tenancy agreement which has been lodged by the Applicant, is 20 June 2016 until 20 June 2017. There is no provision for the tenancy to continue on a month to month basis, or otherwise. It therefore appears that the tenancy has continued by tacit relocation for further periods of one year, with an ish on 20 June each year, after the initial term. The Notice to Quit which has been lodged purports to terminate the tenancy contract on 20 August 2021, which is not an ish. As a landlord cannot call upon a tenant to leave a property earlier that he is contractually obliged to do so, the Notice is invalid.
8. The Legal Member is therefore satisfied that the Notice to Quit is invalid. Before raising proceedings for recovery of the property in terms of Section 33 of the 1988 Act, a landlord must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not terminate the

contractual tenancy. As a result, the Applicant has failed to comply with the requirements of Section 33 of the 1988 Act. 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
8 November 2021