



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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 Procedural Rules")

in connection with

117 Cardowan Road, Carntyne, Glasgow, G32 6RW ("the Property")

Case Reference: FTS/HPC/EV/19/2195

Mr Stephen David McCullagh ("the Applicant")

Ms Karen Thorburn ("the Respondent")

1. On 16 July 2019, an application was received from the applicant. The application was erroneously made under Rule 65 of the Procedural Rules, being an application for an order for possession under section 18 of the Housing (Scotland) Act 1988, and it was subsequently amended to proceed under Rule 66 of the Procedural Rules, being an order for possession under section 33 of the Housing (Scotland) Act 1988. The following documents have been provided in support of the application:-

- Copy tenancy agreement dated 7 June 2015
- Copy Notice to Quit

- Copy Section 33 Notice
- Copy Form AT6

DECISION

1. I considered the application in terms of Rule 8 of the 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."

2. After consideration of the application, the attachments and correspondence

from the applicant, I consider that the application should be rejected on the basis that it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

3. '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*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
4. Section 33 of the Housing (Scotland) Act 1988 provides a basis for recovery of possession of properties let on Short Assured Tenancies. In terms of subsection (1), the Tribunal must be satisfied of three things:- (i) that the short assured tenancy has reached its ish (that is to say, its natural expiry); (ii) that tacit relocation is not operating; and (iii) that the landlord has given notice to the tenant stating that he requires possession of the property.
5. In this case, the tenancy agreement commenced on 7 June 2015 and had an initial term of six months. Thereafter, it continued by tacit relocation. As such, it automatically continued for periods of six months.
6. The purpose of a notice to quit is to stop tacit relocation from operating. It cannot bring a tenancy to an end at a date arbitrarily selected. To be effective, the end date specified in a notice to quit must coincide with the ish date. In this case, there are only ever two ish dates in any give year: the seventh day

of June or the seventh day of December. To be effective, the notice to quit in this case would have had to specify one of those dates and provide the required period of notice, which was forty days.

7. In fact, the notice to quit specified that the contractual tenancy would end on 7 July 2019. 7 July 2019 was not an ish date, for the reasons previously stated. As such, it is my view that the notice to quit given to the respondent in this case is invalid. That being so, the contractual tenancy has continued by tacit relocation. It follows that the requirements of section 33 of the Housing (Scotland) Act 1988 have not been met.
8. Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and, separately, that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.
9. For completeness, I should say that this application did not enclose a Form AT5, which form must be served upon a tenant by the landlord prior to the commencement of a tenancy in order for that tenancy to be a Short Assured Tenancy within the meaning of section 32 of the Housing (Scotland) Act 1988. As such, I am not satisfied that the tenancy is, in fact, a Short Assured Tenancy, and would have asked to see the Form AT5 had I thought that the application had potential merit. However, given my decision above, I do not require to reach a concluded view on that matter, and raise this observation in anticipation of any future application being made.

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.

Andrew Upton

Andrew Upton
Legal Member
14 October 2019
