Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/20/2230

Re: Property at 15 Whiteside, Bathgate, EH48 2RF ("the Property")

Parties:

Mr Tom Madden, Mrs Ann Gowans ("the Applicant")

Miss Amanda Mackie ("the Respondent")

1. On 19 October 2020 an application was received from the Applicant. The application was made under Rule 66 of the Tribunal's Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy. The following documents were enclosed with the application:-

    (i)   Tenancy Agreement;
    (ii) Form AT5;
    (iii) AT6 Notice; and
    (iv) Notice to Quit.

2. The Tenancy Agreement was in the name of the Applicant and the Respondent. There was an AT5 Form attached. The Tenancy Agreement states that tenancy shall start on 1 July 2014 until 31 December 2015 and monthly thereafter; with two months' notice being required if either party wished to terminate it. The notice to quit was dated 13 March 2020 and advised the tenant to quit the property on 13 May 2020. An AT6 Notice was also attached indicating that recovery of possession was sought as the landlord intended to sell the property and also referencing rent arrears. There was no Section 33 notice attached with the application. There was no Section 11 Notice submitted with the application.

3.　　On 4 November 2020 further information was sought from the Applicant namely, clarification as to what rule the Applicant sought recovery under, rule 65 or 66; a copy of the Section 33 Notice if recovery was sought under rule 66 together with evidence of service of that notice; a valid notice to quit as the one submitted did not appear to end the contractual tenancy on the ish (end) date; if the application was under rule 65 then the applicant was required to comply with the requirements of Ground 1 (if seeking recovery under that ground); a section 11 notice which requires to be served on the local authority and evidence of service of this notice.

4.　　On 18 November 2020 the Applicant responded to this information request, confirming that the application was made under rule 66 and providing notices which had been freshly served on the tenant.

5.　　On 27 November 2020 further information was requested from the Applicant, while it was noted that the application was made under rule 66, the notices had been re-served on the tenant and therefore the notice periods had not expired; and that the date in the Section 33 Notice is incorrect as it did not take account of the terms of the Coronavirus (Scotland) Act 2020 which changed the notice period to 6 months. The Applicant was asked if they wished withdraw and re-submit the application at the correct time or explain the basis upon which the Tribunal can consider the application.

6.　　On 11 December 2020 the Applicant wrote to the tribunal and asked that the application be allowed to proceed as although new notices had been served and the notice period has not expired, the tenant was nonetheless aware of the intention to recover possession of the property, as she had previously had notice that recovery of the property was sought as far back as March 2020.

DECISION

7.　　I have considered the application 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."

8.   After consideration of the application, I consider 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

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. 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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.

10.   Section 33 of the 1988 Act provides as follows:-

   33 - Recovery of possession on termination of a short assured tenancy.
   (1) Without prejudice to any right of the 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 satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) That tacit relocation is not operating;

(d) that 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.

(2)The period of notice to be given under subsection (1)(d) above shall be—

… six months."

11.   The application was made under rule 66 of the Procedural Rules "*application for possession upon termination of a short assured tenancy".* The rules narrate that any application requires to be accompanied by a notice under section 33 of the Housing (Scotland) Act 1988; and a Notice to Quit served by the landlord on the tenant. While these documents have now been served on the tenant and submitted by the Applicant, the notice period in the notice to quit has not expired; and the tenancy has not therefore reached its ish *date.* The section 33 notice now requires to be served giving the tenant 6 months' notice that the landlord requires possession of the property, as the notice has only recently been served, the 6 months' notice period has not therefore expired.

12.   To recover possession of a short assured tenancy under section 33 of the 1988 Act,   the tribunal must be satisfied that the requirements of this section are met. In this case the statutory requirements have not yet been met, as the short assured tenancy has not yet reached its ish; while the section 33 notice has not expired.

13.   For the reasons set out above, as the statutory requirements have not been met it seems to me that the application is frivolous and should be rejected.


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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.
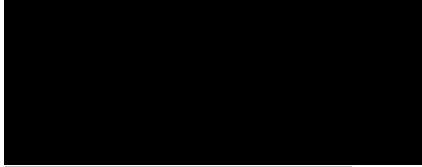
Melanie Barbour   30 December 2020

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Legal Member/Chair   **Date**