

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

68A Bank Street, Galashiels, TD1 1EL ("the property")

Case Reference: FTS/HPC/EV/19/3078

**Alexander Fortune, 10/69 Moo 3 Nongplalai, Banglamung, Chonburi, 20150,
Thailand ("the Applicant")**

**Jade Hinton, Gareth Trainer 68A Bank Street, Galashiels, TD1 1EL ("the
Respondents")**

1. By application dated 30 September 2019 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement dated 27 August 2017, AT5 Notice, Section 33 Notice, Notice to Quit and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. In terms of the application 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. Following a request for further information the Applicant submitted a different tenancy agreement dated 28 October 2016 and confirmed that he wished the application to proceed to be determined by the Tribunal.

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 recovery of possession of a short assured tenancy. The term of the tenancy stated in the copy tenancy agreement is 28 August 2017 to 29 January 2018. Section 32 of the 1988 Act states "(1) A short assured tenancy is an assured tenancy – (a) which is for a term of not less than six months," The tenancy agreement lodged with the application is for a term of 5 months. The Applicant submitted a further tenancy agreement. It predates the previous agreement, having been signed on 28 October 2016. The period of the tenancy is 28 October 2016 to 29 April 2017. It is in the sole name of the Second Respondent. It has therefore been superseded by the later agreement which was signed by both Respondents. As the tenancy between the parties is not a short assured tenancy agreement in terms of the 1988 Act the application to the Tribunal in terms of Rule 66 is not competent.
7. The Legal Member proceeded to consider whether the application could be considered in terms of Rule 65. The Legal Member noted that the Applicant has not served an AT6 Notice in terms of Section 19 of the 1988 Act. Furthermore, the Notice to Quit lodged with the application is not valid as it calls upon the Respondents to vacate the property on 28 September 2019 which is not an ish date of the tenancy. The Applicant has therefore failed to terminate the tenancy contract.
8. The Applicant has failed to meet the requirements of either Section 32 and 33 or 18 and 19 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

Josephine Bonnar
Legal Member
25 November 2019
