

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

35 Nithsdale Crescent, Bearsden, Glasgow, G41 4HY

**Case Reference: FTS/HPC/EV/18/08688**

**MRS OONAGH BRYSON ("the applicant")**

**MS ANNA MARIA LUPI ("the respondent")**

1. On 10<sup>th</sup> April 2018, an application was received from the applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
  - (a) Copy Short Assured Tenancy Agreement;
  - (b) Copy of Form AT5
  - (c) Copy Notice to Quit;
  - (d) Copy Section 33 notice;
  - (e) Copy Section 11 notice.

## DECISION

2. I considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

*"Rejection of application*

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*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."*

3. 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 is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

## REASONS FOR DECISION

4. '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 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.
5. The notice to quit, which is dated 17<sup>th</sup> January 2018, is invalid in respect that it specifies a date to leave the premises of 25<sup>th</sup> March 2018. That termination date is not an *ish* of the tenancy agreement, as that date is required to be in order to constitute an effective notice. The Short Assured Tenancy Agreement states at paragraph 1.1 that "the lease will be for the period of 12 months from the 26<sup>th</sup> January 2014 ("start date") and will end on 26<sup>th</sup> January 2015 ("end date"). If this agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated by either party giving no less than two months notice to the other party". Accordingly, as the agreement was not brought to an end on the 26<sup>th</sup> January 2015, it continued thereafter to the 26<sup>th</sup> day of the following month, and from month to month thereafter. That being so, as the *ish* of the lease falls on the 26<sup>th</sup> day of each month, the notice to quit on the 25<sup>th</sup> day of March (not an *ish* date) is ineffectual.
6. For this reason, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

### 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.

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N Kinnear

Neil Kinnear  
Legal Member  
10<sup>th</sup> May 2018