

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



**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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

**41B Garry Drive, Paisley, PA2 9BX**

**Case Reference: FTS/HPC/EV/19/2772**

**Mrs Mary Davis ("the applicant")**

**Miss Emma Reynolds, Mr Ryan McMillan ("the respondent")**

1. On 4<sup>th</sup> September 2019 an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for an order for possession in relation to assured tenancies. The following documents were enclosed with the application:-

1. Tenancy Agreement
2. AT6
3. Notice To Quit
4. Proof of service by Sheriff officers
5. Rent Statement

The Tenancy Agreement purports to be a Short Assured Tenancy Agreement in terms of the Housing (Scotland) Act 1988 ("the 1988 Act"). It is dated 3<sup>rd</sup> April 2017. There is no reference in the Tenancy Agreement to the grounds of Eviction contained in Schedule 5 of the 1988 Act.

A Notice To Quit has been served but only gives three weeks' notice, which is not sufficient to bring the Tenancy to an end.

## DECISION

2. 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."*

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 or vexatious within the meaning of Rule 8(1)(a) 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.

The Application is under Rule 65 of the Procedural Rules. It is therefore based on the principles contained within sections 18 and 19 of the 1988 Act. In those circumstances the Applicant requires to demonstrate that the provisions in the Tenancy Agreement meet the requirements set down in section 18 of the 1988 Act. In the case of *Royal Bank of Scotland v Boyle* (1999 Housing Law Reports 63), where the court considered the extent of these provisions, the court held that the tenancy agreement must provide for the tenancy to be brought to an end on the ground in question, being a ground in Schedule 5 to the 1988 Act, specified in section 18(6)(a). In that case Sheriff Principal Wheatley stated that it was necessary that the essential ingredients of these conditions must be referred to in the tenancy agreement.

There is no reference to the Schedule 5 grounds in the Tenancy Agreement and therefore the eviction cannot proceed on the basis of those grounds unless the tenancy Agreement has been terminated, with the effect that the tenancy has become a statutory assured tenancy under section 16 of the Act. The period of notice is determined by the tenancy agreement, subject to a minimum of 28 days under section 112 of the Rent (Scotland) 1984. The tenancy agreement at clause 3.20 states that no less than two months' notice must be given.

4. Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous or vexatious within the meaning of Rule 8(1)(a) of the Procedural Rules. It is hopeless and has no prospect of success.

#### **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.

**A.K**

Alison J Kelly  
Legal Member  
23<sup>rd</sup> September 2019