

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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

23 Central Avenue, Ardrossan, KA22 7DZ

Case Reference: FTS/HPC/EV/19/1387

Mr George Rout, 10 West Doura Avenue, Saltcoats, KA21 5NR ("the applicant")

Miss Lisa Clark, 23 Central Avenue, Ardrossan, KA22 7DZ ("the respondent")

1. On 8 May 2019 an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules being an application for possession on termination of a Short Assured Tenancy in terms of Section 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-

- Copy Tenancy Agreement
- Copy Notice to Quit
- Copy Section 11 Notice
- Copy Section 33 Notice
- Letter to Tribunal from Cunninghame Properties dated 3 May 2019.

By letter dated 9 May 2019 the Tribunal requested further information from the Applicant namely the notice by the landlord that the tenancy is a short assured tenancy. A copy of the AT5 was subsequently received.

The Tribunal wrote again for further information on 29 May 2019 and 26 June 2019. The further information requested was in the following terms:

“The tenancy was for an initial period of one year from 23 January 2015 to 23 January 2016. The tenancy makes no provision for what happens thereafter so tacit relocation applies and the tenancy renews each year on 23 January for a further period of a year. The Notice to Quit and Section 33 Notice purport to end the tenancy on 23 March 2019 which does not tie in with the termination date of the tenancy which should be 23 January. Please provide your submission as to whether or not you consider the tenancy to have been validly terminated.”

Further we note that the Section 33 Notice you have provided with your application is undated. Could you please also indicate your position on the validity of that notice.

You have provided no proof of service of the notice to quit and section 33 Notice nor in relation to the section 11 notice to the local authority. Could you please provide copies of these.

Finally, the Tribunal has received correspondence from Cunninghame Properties in relation to this application. Could you please confirm if you wish them to be your representative and, if so, please provide us with your written authority for them to represent you in this application.”

The applicant was asked to respond with the further information by 11 July 2019 and was advised that if the Tribunal did not hear from him by this date, the President may decide to reject the application.

The Applicant has not responded to the requests for further information. The application therefore requires to be considered in the absence of any further submissions or documents from the Applicant.

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."

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 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

4. On the evidence before it the Notice to Quit is not valid as it purports to terminate the tenancy on a date other than the *ish* date. The tenancy agreement is for an initial period of one year from 23 January 2015 to 23 January 2016. The tenancy agreement is silent as to what happens if the tenant continues to occupy the Property at the expiry of the original term in the tenancy agreement. It thereby continues by tacit relocation for yearly intervals with an *ish* date of 23 January. The Notice to Quit contains a removal date of 23 March 2019 and is therefore invalid.
5. The Applicant has not provided evidence of service of either the Notice to Quit or Section 33 Notice despite being requested to do so by the Tribunal. The section 33 Notice is undated. It is not possible to identify whether sufficient notice has been given to the Respondent in either the Notice to Quit or the section 33 notice in the absence of proof of execution of service.
6. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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.

7. The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. On the papers before it, I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application and in circumstances where there appear to be serious defects in the Applicant's application.

8. Accordingly, for this reason, this application must be rejected upon the basis 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.

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.

Anne Mathie

Anne Mathie
Legal Member
26 July 2019