



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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

21 Robshill Court, Newton Mearns, Glasgow, G77 6UG

Case Reference: FTS/HPC/EV/19/1671

Mrs Agnes Moss ("the applicant")

Thomson Residential Lettings ("the applicant's representative")

Mr Marc Parker ("the respondent")

1. On 31 May 2019, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules being an application for recovery of possession of a property let on a Short Assured Tenancy. The following documents were enclosed with the application:-
 - Copy Short Assured Tenancy Agreement dated 1 July 2016;
 - Copy form AT5 dated 1 July 2016;
 - Copy Notice to Quit dated 11 March 2019; and
 - Copy Notice in terms of Section 33 of the Housing (Scotland) Act 1988 dated 11 March 2019.

DECISION

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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 it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and 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. '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.
5. This application proceeds under section 33 of the Housing (Scotland) Act 1988. In terms thereof:-

"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 shall make an order for possession of the house if the Tribunal is satisfied—*
 - (a) *that the short assured tenancy has reached its finish;*
 - (b) *that tacit relocation is not operating; and*
 - (c) *.....*
 - (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.*
- (2) *The period of notice to be given under subsection (1)(d) above shall be—*
 - (i) *if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;*
 - (ii) *in any other case, two months.*
- (3) *A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.*

(4) *Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.*

(5) *For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section."*

6. In terms of section 33 of the Housing (Scotland) Act 1988, the Tribunal shall not make an order for possession of a house which is, for the time being, let on a short assured tenancy if tacit relocation is operating, which is to say that the contractual tenancy is continuing. It follows that, to be entitled to recovery of possession under section 33 of a property let on a short assured tenancy, the applicant would have had to have first terminated the contractual tenancy. One method of doing so would be by bringing the contract to an end at its natural expiry by service of a notice to quit. In this case, that appears to be what the applicant has attempted to do.
7. The tenancy agreement commenced on 29 July 2016. The first period of let ended on 28 July 2017, and continued on a monthly basis thereafter.
8. The purpose of a notice to quit is to stop tacit relocation from operating. It cannot bring a tenancy to an end at a date arbitrarily selected. To be effective, the end date specified in a notice to quit must coincide with the ish date. In this case, the notice to quit ought to have specified that the tenancy would end on the first available ish date after the expiry of the notice period required by the tenancy agreement, which appears to be 28 days. Based on the terms of the tenancy agreement, there would be a new ish every month on the 28th day of the month.
9. The Notice to Quit in this case specified that the tenancy would come to an end on 29 May 2019. That was not an ish date. As such, the contractual tenancy is continuing by tacit relocation. The requirements of section 33(1)

are not met, and the application cannot succeed.

10. For those reasons, it is my view that the application is frivolous within the meaning of Rule 8(a). Further, it is my view that it would be inappropriate in these circumstances to accept this application in terms of Rule 8(c). I reject the application.

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.

Andrew Upton

Andrew Upton
Legal Member
28 June 2019