

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



**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 Rules")

in connection with

Sycamore, Glass, Huntly, AB54 4YA

**Case Reference: FTS/HPC/EV/18/0001**

**KEITH PHIPPS; LAURA PHIPPS ("the Applicants")**

**CHERYL PHIPPS; MARTIN HOWELL ("the Respondents")**

- 1 On 21 December 2017, an application was received from the applicant via its solicitor. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an Assured Tenancy. The following documents were enclosed with the application:-
  - (i) Copy Short Assured Tenancy Agreement;
  - (ii) Copy Form AT6;
  - (iii) Copy Notices to Quit;
  - (iv) Copy Notices under section 33 of the Housing (Scotland) Act 1988;
  - (v) Copy Notice to Local Authority in terms of section 19A of the Housing (Scotland) Act 1988;
  - (vi) Copy Rent Account Statement; and
  - (vii) Copies of Council Payment Notifications.
- 2 The Tenancy Agreement commenced on 1 September 2015 and was for a period of twelve months. The Tenancy Agreement provided that, if the Tenancy Agreement had not been terminated as at 16 September 2016, it would continue on a month-to-month rolling basis thereafter. The Tenancy Agreement provided that two months' notice to quit required to be

given to terminate the Tenancy Agreement. There is no provision within the Tenancy Agreement which makes provision for the agreement to be brought to an end on the basis of Grounds 2, 8, 9, 10, 15 or 17 in Schedule 5 to the 1988 Act.

- 3 The Notices to Quit provided that the Tenancy Agreement would terminate on 11 October 2017. The Notices to Quit are dated 11 August 2017 and were sent by Recorded Delivery post. There are no delivery receipts enclosed with the application, but the earliest date of delivery would have been 12 August 2017.

## DECISION

- 4 I 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.”*

- 5 After consideration of the application, the attachments and correspondence from the Applicant’s solicitor, 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

6 '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.

7 Section 16(1) of the 1988 Act provides as follows:-

### **"16.— Security of tenure**

*(1) After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below—*

*(a) continue to have the assured tenancy of the house; and*

*(b) observe and be entitled to the benefits of all the terms and conditions of the original contract of tenancy so far as they are consistent with this Act but excluding any—*

*(i) which makes provision for the termination of the tenancy by the landlord or the tenant; or*

*(ii) which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period) otherwise than by an amount specified in or fixed by reference to factors specified in that contract or by a percentage there specified, or fixed by reference to factors there specified, of an amount of rent payable under the tenancy,*

*and references in this Part of this Act to a "statutory assured tenancy" are references to an assured tenancy which a person is continuing to have by virtue of this subsection, subsection (1) of section 31 below, or section 3A of the Rent (Scotland) Act 1984."*

8 Section 18(6) of the 1988 Act provides as follows:-

### **"18. - Orders for possession**

*(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—*

*(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and*

*(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question."*

9 There are only two types of assured tenancy: a contractual assured tenancy and a statutory assured tenancy. A contractual assured tenancy, once terminated, becomes a statutory assured tenancy in terms of section 16(1) of the 1988 Act. Accordingly, it follows that where a contractual assured tenancy is in operation, the First-tier Tribunal cannot make an order for possession unless the requirements of section 18(6) are met.

10 It appears to me that the Notice to Quit is invalid. The function of a Notice to Quit is to stop tacit relocation. A properly served Notice to Quit cannot terminate a tenancy other than at the natural expiry of the tenancy agreement. It is not, for example, a form of irritancy whereby a party can insert any termination date. To be valid, it must specify that the tenancy agreement to which it relates shall terminate at a properly calculated ish date. In this case, the ish date for the Tenancy Agreement occurs monthly on the 16<sup>th</sup> of the month. 11 October 2017 was not an ish date. In any event, it appears that the Notice to Quit was served at the earliest on 12 August 2017, and did not therefore give the period of notice of two months required by the Tenancy Agreement. For those reasons, the Notice to Quit given to the tenants is invalid. Accordingly, the Short Assured Tenancy in this application is currently a contractual assured tenancy, and shall remain so until terminated by validly served Notices to Quit.

11 The Tenancy Agreement does not make provision for it to be brought to an end on any of the Grounds specified in section 18(6). Accordingly, the requirements of that subsection are not met, and the application falls to be rejected on the basis that it is frivolous.

#### Observations

12 For completeness, I note that the application seeks to recover possession on the basis of Grounds 8, 11, 13, 14, 15 and 16 in Schedule 5 to the 1988 Act, but the Form AT6 only refers to Grounds 11 and 12.

#### **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.

Mr Andrew Upton  
Legal Member  
8 January 2018