



**DECISION AND STATEMENT OF REASONS OF JAMES BAULD, 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

33 Brankston Avenue Stonehouse ML9 3JE

Case Reference: FTS/HPC/EV/19/2958

Mr Henry Clark ("the applicant")

Miss Laura McIntyre ("the respondent")

1. On 20 September 2019, an application was received from the applicant. The application was made under Rule 65 of the Rules being an application by a private landlord for an order for possession of an assured or a short assured tenancy. Various documents were provided with the application including a copy of the tenancy agreement., a Form AT6 and a Notice to Leave

DECISION

2. 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."

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. This application seeks an order for possession of a property let under a tenancy which bears to be a short assured tenancy. The methods for recovery of possession of such a tenancy are set out in the Housing (Scotland) Act 1988 ("the 1988 Act"). One method is provided by section 33 of the 1988 Act which relates exclusively to short assured tenancies. That requires the service of a valid Notice to Quit and an additional notice in terms of section 33(1)(d) of the 1988 Act. Each of these notices requires to meet certain legal requirements. In this case no such notices have been served and recovery is not sought on that basis. It is noted that the applicant has submitted what bears to be a "Notice to Leave". This form of notice relates to tenancies which are private residential tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 and has no relevance to an assured tenancy.
6. It is also possible to seek an order for recovery of possession of an assured tenancy using the provisions of section 18 and 19 of the 1988 Act. That procedure requires the service of a valid statutory form, the Form AT6 and the use of one of the grounds for possession set out in schedule 5 of the 1988 Act.
7. In this case a Form AT6 bears to have been served upon the tenant although no evidence is provided with regard to the method of service of this form. A copy of the form has been provided and is dated 21 September 2019. The Form AT6 states that proceedings will not be raised before 22 September 2019. Section 19(4) of the 1988 Act also specifies that the minimum period of notice to be given when using the

Form AT6 is two weeks. The notice submitted with the application gives only one day's notice. Accordingly the notice fails to provide the required minimum period of notice and is thus invalid.

8. This procedure under sections 18 and 19 of the 1988 Act can also only be utilised during the currency of an assured tenancy if the applicant is seeking possession on one of a specified number of grounds for possession set out in schedule 5 of the 1988 Act and only if "*the terms of the tenancy make provision for it to be brought to an end on the ground in question*" (section 18(6)(b) of the 1988 Act). The copy tenancy agreement which has been submitted contains no such provision and thus the procedure under section 18 and 19 cannot be used in this case. Indeed, in the case of *Royal Bank of Scotland v Boyle* (1999 Housing Law Reports 63) Sheriff Principal Wheatley indicated that it was not sufficient to refer to the possible grounds simply by reference to the statutory provisions and stated that "the essential ingredients of those conditions must be referred to in the tenancy agreement". The tenancy agreement in this case does not even make reference to the statutory grounds far less provides any summary of them. Even if the tribunal accepted that the lack of the appropriate period of notice in in the form AT6 did not render the form itself invalid, the lack of appropriate terms in the tenancy agreement make it impossible for the procedure under sections 18 and 19 to be used.
9. Accordingly this application being apparently based on the tenancy being an assured tenancy and possession being sought using the procedures set out in sections 18 and 19 of the 1988 Act, then in in the absence of appropriate terms in the tenancy agreement and a valid Form AT6, it is not possible to utilise this procedure. Accordingly 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.

James Bauld

James Bauld
Legal Member
18 October 2019

