

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

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**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

Apartment 1, 172 Market Street, Aberdeen, AB11

**Case Reference: FTS/HPC/EV/18/1145**

**LUMURIA ENTERPRISES ("the Applicant")**

**MR DONALD AJAEBU ("the Respondent")**

1. The application was made under Rule 79 of the Chamber Procedural Rules being an application by a private landlord to evict an occupier upon termination of a tenancy commencing prior to 2 January 1989. Attachments were provided with the application form to support the application and these attachments included a Notice under Section 33 of the Housing (Scotland) Act 1988 and Notice to Quit. A copy of the tenancy agreement was also attached.
2. The tenancy agreement commenced on 30 November 2017, with the initial period of let ending on 31 May 2018.
3. In the absence of any notice served by either party terminating the contractual tenancy agreement, it was to continue on a month to month basis from the 31 May 2003 in terms of Paragraph 2 of the tenancy agreement.
4. The present application is accompanied by a Notice to Quit dated 6 March 2018 purporting to terminate the contractual tenancy agreement on 7 May 2018. The Notice under Section 33 of the Housing (Scotland) Act 1988 was also dated 6 March 2018 and required vacant possession as of 7 May 2018.
5. A request for further information had been made, asking the applicant to confirm, amongst other things, whether the applicant was relying on having terminated a Short Assured Tenancy by way of Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988, or Grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988, as was stated in the application.
6. The applicant confirmed that a Notice under Section 19 of the Housing

(Scotland) Act 1988, in form AT6, had not been served.

## DECISION

7. The circumstances in which an application is to be rejected are governed by 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."*

8. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, the Legal Member considers 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**

9. Although the present application was stated as being made under Rule 79, given the date of commencement of the tenancy, it could not be made under this Rule. The Legal Member is of the view that it must either be considered an application under Rules 65 or 66. Irrespective of which of these two rules it is considered under, the Legal Member considers that this application has no prospect of success.
10. Firstly, an issue identified in this application is the validity of the Notice to Quit. As the

tenancy agreement makes provision for an initial period of let ending on 31 May 2018. The 7 May 2018 was therefore not a valid *ish* date on which the contractual tenancy agreement may have been terminated.

11. The circumstances in which a property let on a short assured tenancy may be recovered upon termination are governed by Section 33 of the Housing (Scotland) Act 1988. Section 33 provides:-

**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 ish;*

*(b) that tacit relocation is not operating; [ and]*

*[...]*

*(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] <sup>5</sup> makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish 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.]*

12. It is clear that, without service of a valid Notice to Quit, it cannot be said that the tenancy agreement has reached its *ish*. A contractual tenancy agreement is continuing between the parties. Termination of a short assured tenancy agreement has not occurred.
13. Secondly, if the applicant were to be considered to be relying upon Grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988, the Legal Member notes the applicant has confirmed that no notice in terms of Section 19 of the Housing (Scotland) Act 1988 has been given. Section 19 provides:-

**19.— Notice of proceedings for possession.**

*(1) The [First-tier Tribunal] <sup>1</sup> shall not entertain proceedings for possession of a house let on an assured tenancy unless—*

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) [the Tribunal]<sup>2</sup> considers it reasonable to dispense with the requirement of such a notice.

(2) The [First-tier Tribunal]<sup>3</sup> shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground [and particulars of it are]<sup>4</sup> specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the [Tribunal]<sup>3</sup>.

(3) A notice under this section is one [in the prescribed form]<sup>5</sup> informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5) The [First-tier Tribunal]<sup>6</sup> may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.

(6) Where a notice under this section relating to a contractual tenancy—

(a) is served during the tenancy; or

(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

14. Section 19(1) confirms that the First Tier Tribunal should not entertain proceedings for possession unless notice under this Section has been given to the tenant, unless the Tribunal considers it reasonable to dispense with the requirement to have served such notice. Section 19(5) prevents the Tribunal from exercising the discretionary power where a landlord seeks to recover possession on the basis of Ground 8 of Schedule 5. In the present application, the applicant relies on Ground 8. An order for possession cannot be made on the basis of this Ground without notice under Section 19 having been given to the Respondent. The Legal Member does not consider it reasonable to dispense with the requirement for notice under Section 19 to be given to the Respondent that the applicant seeks an order for possession under Ground 11.
15. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North*

*West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success. Accordingly, the present application is rejected on 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.

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Mr Alastair Houston  
Legal Member  
6 June 2018