Decision with Statement of Reasons of Fiona Watson, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 8 of the First-tier Triunal for Scotland Hosing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/18/0056

Re: Property at 82 Cardowan Road, Carntyne, Glasgow, G32 6QP ("the Property")

Parties:

STEPHEN DAVID McCULLAGH ("the Applicant")

ELIZABETH DICKSON ("the Respondent")

1. On 10 January 2018 an application was received from the applicant. The application was made under Rule 66 of the Rules being an application by a landlord for possession of the property let under an Assured Tenancy under section 33 of the Housing (Scotland) Act 1988 ("the 198 Act"). The following documents were enclosed with the application:

    (i) Copy Rental Agreement
    (ii) Copy notice under s33 of the Housing (Scotland) Act 1988
    (iii) Copy AT6
    (iv) Copy of Post Office Certificate of posting.
    (v) Copy Summary Cause Summons

2. A request for further information was sent to the Applicant on 19 January 2018. On 2 February 2018 the Applicant provided the following additional documents:
    (i) Letter from Applicant confirming that he now wished to apply under Rule 65 of the Rules and that he now wished to rely on Ground 8.
    (ii) Copy Notice to Quit
    (iii) Copy Form AT5

3. In terms of the Rental Agreement provided by the Applicant, the Agreement commenced on 1 August 2008 and was for an initial period of 6 months.

Decision

4. I considered the Application in terms of Rule 65 of the Rules, as per the Applicant's request in his letter of 2 February 2018. I also considered the Application in terms of Rule 8 of the Rules. Rule 8 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 and the documents provided by 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 Rules.

REASONS FOR DECISION

6. "Frivilous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Midlenhall) 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 18 of the 1988 Act provides as follows:-

"18. Orders for possession

(1) The sheriff shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the sheriff is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6)below, he shall make an order for possession.

(3A) If the sheriff is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,

he shall not make an order for possession unless he considers it reasonable to do so.

(4) If the sheriff is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, he shall not make an order for possession unless he considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the sheriff shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the sheriff in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The sheriff 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.

(6A) Nothing in subsection (6) above affects the sheriff's power to 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, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the sheriff may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8)In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa)"relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

8. The Applicant has provided a copy Form AT6 which seeks to rely on Ground 12 of the 1988 Act. That AT6 makes no reference to Ground 8. The Applicant has also provided a copy Rental Agreement with his application. There is no reference within the terms of the Rental Agreement to any rights of

repossession by the Applicant, nor any reference whatsoever to any of the grounds of repossession contained within the 1988 Act nor any right to rely on same. In terms of section 18(6) of the 1988 Act, an order for repossession of a property currently let on an assured tenancy, not being a statutory tenancy, cannot be made unless the terms of the tenancy make provision for it to be brought to an end on the grounds in question. The Rental Agreement provided by the Applicant does not contain any terms allowing it to be brought to an end on any of the grounds of repossession.

9. In terms of the requirements of section 18(6) of the 1988 Act, I do not consider that the Rental Agreement is currently a statutory assured tenancy. In order for the existing agreement to be a statutory assured tenancy, a valid notice to quit must have been served on the tenant to bring the contractual tenancy to an end. The Notice to Quit provided by the Applicant is invalid. This is due to a number of reasons. The Rental Agreement provides that the term of let is for an initial period of 6 months beginning 1 August 2008. The rental agreement is silent as to how the tenancy should carry on thereafter. The agreement can therefore be deemed to running on a 6 monthly basis in line with the initial contractual period. Accordingly, the Rental Agreement is running to 1 February and 1 August each year. These two dates are the ish dates of the agreement. Any Notice to Quit must require the tenant to vacate the property on a date coinciding with the ish date of the agreement. The Notice to Quit provided by the Applicant gives notice to quit the premises by 8 November 2017. This date does not coincide with the ish date of the tenancy agreement and accordingly is not valid. Further, no property address has been inserted into the Notice to Quit making it clear which property must be vacated on the specified date. Again, for that reason the Notice to Quit is invalid. Further, whilst the Applicant has provided a copy of a Post Office receipt, he has failed to provide any evidence that the Notices were indeed signed for at the address.

10. Accordingly, for the reasons outlined above I consider that the application for an order for repossession should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the 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 appal 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,

F Watson

Mrs Fiona Watson
Legal Member
8 February 2018