

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



**DECISION AND STATEMENT OF REASONS BY THE 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

52 Morar Place, Irvine, KA12 9PU

**Case Reference: FTS/HPC/EV/19/0925**

**The Parties:-**

**Miss Anne Howatson, 1 MacReadie Place, Perceton, Irvine, KA11 2BF ("the Applicant")**

**Lomond Estate Agents, 26 Parkhouse Street, Ayr, KA7 2HH ("the Applicant's Agent")**

**Miss Amy Little and Mrs David Wilson, 52 Morar Place, Irvine, KA12 9PU ("the Respondents")**

1. By application dated 22 March 2019 the Applicant applied to the Tribunal under Rule 66 of the Procedural Rules for an order for recovery of possession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-

- (1) Short Assured Tenancy Agreement between the Applicant and Respondents dated 13 March 2017;
- (2) Form AT5 dated 13 March 2017;
- (3) Notice to Quit dated 7<sup>th</sup> February 2019;

(4) Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 dated 7<sup>th</sup> February 2019;

(5) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Ayrshire Council.

2. On 1<sup>st</sup> April 2019 the Legal Member of the Tribunal with delegated powers of the Chamber President considered the application paperwork. In particular the Legal Member considered whether there were any grounds to reject the application under Rule 8 of the Procedural Rules.

## DECISION

3. The Legal Member determined to reject the application on the basis that she had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

## REASONS FOR DECISION

1. In reaching her decision, the Legal Member considered the application together with the attachments provided by the Applicant.
2. '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 the Legal Member had to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
3. Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") provides that the Tribunal must make an order for repossession where the provisions of section 33(1) of the Act have been met, that is that the short assured tenancy has reached its finish, tacit relocation is not operating and the landlord has given the tenant notice stating that they require possession of the house ("the Section 33 Notice").
4. The Notice to Quit had been served by Sheriff Officers on the Respondents on 7<sup>th</sup> February 2019 and sought to terminate the tenancy as at the 20<sup>th</sup> March 2019 which was a valid ish date and gave the required period of notice of forty days. It further contained the prescribed content as required by the Notice to Quit etc. (Prescribed Information) Regulations 1988. The Respondents had both received a copy of the Notice. The Legal Member was therefore satisfied that the short assured tenancy had reached its finish and tacit relocation was not operating by virtue of the service of a valid Notice to Quit.
5. The notice under section 33(1)(d) of the 1988 Act ("the Section 33 Notice) had also been served on the Respondents by Sheriff Officers on 7<sup>th</sup> February

2019 and required their removal on 20<sup>th</sup> March 2019, no doubt to tie in with the Notice to Quit. However the required periods of notice for the two notices are not so aligned. The statutory notice period for a Section 33 Notice is contained within section 33(2) of the 1988 Act which states as follows:-

*“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”*

The Section 33 Notice is therefore defective in that it fails to give the minimum two months notice as required by section 33(2) of the 1988 Act. There is no discretion afforded to the Tribunal where a lesser period of notice has been given. Accordingly the provisions of section 33 cannot be met.

6. The Legal Member therefore determined that the application had no prospect of success on the basis that the Applicant could not comply with the provisions of section 33 and could be held to be futile and misconceived as a result. Accordingly having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Tribunal concluded that the application was frivolous and rejected it under Rule 8(1)(a) of the Procedure Regulations.

### **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.**

R O'Hare

✓ Ruth O'Hare  
Legal Member