



**DECISION AND STATEMENT OF REASONS OF STEVEN QUITHER, 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

4a BROOK STREET, MONIFIETH, DD5 4BD

Case Reference: FTS/HPC/EV/19/1112

**ANDREW BUTTERWORTH, 6 WATSON WAY, MUIRDRUM, CARNOUSTIE DD7 6JX ("the
applicant")**

**CATRIONA MASSIE, 4a BROOK STREET, MONIFIETH, DD5 4BD
("the respondent")**

DECISION

After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

BACKGROUND

1. On 10 April 2019, an application was received from the applicant, submitted through his solicitor. The application was made under Rule 65 of the Procedural Rules being an application for possession on termination of an Assured Tenancy. The following documents were enclosed with the application:-

- Lease/Tenancy Agreement dated 2 December 2012;
- Form AT6 dated 5 March 2019;
- Notice to Quit dated 5 March 2019;
- Notice under Section 33 of the Housing (Scotland) Act 1988 (as amended), (“the 1988 Act”), dated 5 March 2019;
- Sheriff Officer Execution of Service re Notice to Quit and s33 Notice, dated 8 March 2019;
- (Undated) Notice under Section 11 of the Homelessness etc Act 2003.

2. Rule 8 of the Procedural Rules 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."

REASONS FOR DECISION

3. The applicant seeks to recover possession of the property on the basis of Grounds 8, 11, 12 and 14 of Schedule 5 of the 1988. a Notice to Quit was served timeously upon the respondent.
4. Although no AT5 was included with the application, the Tenancy Agreement describes itself as a "Lease Tenancy Agreement Short assured Tenancy", commencing 2 December 2012 and for a period of 6 months, terminating on 1 June 2013. The tenancy continued beyond the termination date as no Notice to Quit was served so as to prevent the operation of tacit relocation. The agreement therefore continued until such time as brought to an end by the service of a valid Notice to Quit or establishment of other grounds under the 1988 Act, which latter route has been taken by the applicant.
5. Said Agreement makes reference, in Paragraph 8, to the Landlord being entitled to terminate it "upon obtaining an order for possession upon any of the grounds set out in the Housing (Scotland) Act 1988", but said grounds are not further elaborated upon. Accordingly, they are referred to by reference only and, in terms of Royal Bank of Scotland v Boyle 1999 Hous LR 63 at Paragraph 12-11, that is not sufficient notice to the respondent of the grounds upon which recovery of possession might be sought.
6. The applicant has also served a Notice to Quit on the respondent, dated 5 March, served on 8 March and requiring the respondent to vacate the property by 8 April, all 2019. However, the end date in terms of the lease, in terms of its Paragraph 3, is the 1st day of each month and any Notice to Quit has to reflect that end date. Obviously, the Notice to Quit served here does not do so. The s33 Notice lodged bears the same dates, which does not afford the requisite period of notice of 2 months or more in terms of s33(2), depending on the duration of the lease.
7. Accordingly, no matter whether the applicant seeks to recover possession on the basis of a Short Assured Tenancy being brought to an end by the prevention of tacit relocation or by the application of Schedule 5 Grounds, the correct procedural steps and timetable

do not appear to have been complied with. Accordingly, I do not consider it is appropriate to accept the application, which I now reject.

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.

SR QUITHER
Legal Member

GLASGOW
20 MAY 2018