

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



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
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**

**27 Anderson Crescent, Prestwick, Ayrshire, KA9 1EJ ("the property")**

**Case Reference: FTS/HPC/EV/19/2319**

**Ryan Rodger, 20 Corton Shaw, Ayr, Ayrshire, KA6 6GG ("the Applicant")**

**Amanda Kinney, 27 Anderson Crescent, Prestwick, Ayrshire, KA9 1EJ ("the  
Respondent")**

1. By application dated 22 July 2019 the Applicant seeks an order for recovery of possession of the property in terms of Rule 65 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement dated 4 August 2016 and a Notice to leave dated 4 August 2016. The application states that the Applicant seeks possession of the property because of a breach of tenancy and failure to pay rent by the Respondent.
2. A request for further information was issued to the Applicant on 26 July 2019 and a reminder issued on 15 August 2019, when no response was received. In response the Applicant lodged an AT6 form dated 22 July 2019 which stipulates an earliest date for raising proceedings of 13 June 2019. In addition a copy email addressed to South Ayrshire Council was lodged indicating that the Applicant intended to raise proceedings for an eviction order against the Respondent. On 13 September 2019 a further request for information was

issued to the Applicant. Firstly, the Applicant was asked to explain the discrepancy between the date of the AT6 and the date stipulated for raising proceedings. The Applicant was also asked to provide a rent statement, a copy of the Notice to Quit served on the Respondent and evidence that the Local Authority had been notified of the intention to raise eviction proceedings in the format prescribed by the Homelessness etc (Scotland) Act 2003. On 14 September the Applicant lodged a further copy of the Notice to Leave together with a copy post office receipt and a further copy of the email to South Ayrshire Council. The Applicant also advised that, " The AT6 form was sent on 22 July but states that proceedings will not be raised before 13/6/19 because a Notice to Quit was issued on 16/5/19 which allows 28 days. The reason for the delay in not sending the AT6 on 13 June was due to the tenant solicitor not getting back to me until mid-July".

## DECISION

3. The Legal Member 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.”*

- 4. After consideration of the application and documents lodged in support of same 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**

5. '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.
6. The application lodged with the Tribunal seeks recovery of possession of an assured tenancy in terms of Section 18 of the Housing (Scotland) Act 1988. The Applicant has not served a valid Notice to Quit on the Respondent terminating the tenancy contract. The Notice served by the Applicant is a Notice to Leave in terms of the Private Housing Tenancies (Scotland) Act 2016 and relates to private residential tenancies created after 1 December 2017. As the Applicant has not served a valid Notice to Quit the tenancy contract has not been terminated.
7. The Legal Member proceeded to consider the AT6 Notice which has been lodged and whether the application can be considered in terms of Section 18(6) of the Act. This states "The first tier Tribunal 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 1 of Schedule 5 to the 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**". The copy tenancy agreement which is lodged with the application does not specify the grounds for recovery of possession upon which the Applicant seeks to rely. In *Royal bank of Scotland v Boyle* 1999 HousLR it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, "(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate". The Legal Member notes that the grounds for recovery of possession are not referred to nor narrated in the tenancy agreement which has been lodged. As a result the Applicant has failed to meet the requirements of section 18(6) of the Act and cannot therefore proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation.

8. The Legal Member also notes that the AT6 which has been lodged is invalid. It specifies an earliest date for proceedings to be raised which is five weeks before the date the Notice was issued to the Respondent. Furthermore it identifies the grounds for possession as ground 11 (breach of tenancy) and ground 12 (rent arrears.), being grounds for eviction in terms of the 2016 Act and not valid grounds for possession in terms of the 1988 Act. Lastly, the Legal Member notes that the notification sent to the local authority in terms of Section 11 Homelessness etc (Scotland) Act 2003 is not in the format prescribed by Notice to Local Authorities (Scotland) Regulations 2008, as amended.
9. The Legal member therefore concludes that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

### **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.

Josephine Bonnar  
Legal Member  
4 October 2019

