

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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

10 Natal Place, Cowdenbeath, Fife, KY4 8HX

Case Reference: FTS/HPC/EV/19/3700

Miss Angela Harris ("the Applicant")

Mr Andrew Wakley, Ms Claire Duncan ("the Respondent")

The Application was lodged on 19th November 2019, under Rule 66 of the Chamber Procedural Rules, being an application by a private landlord for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the Application:

- (i) Copy Tenancy Agreement
- (ii) Copy AT5
- (iii) Copy Notice To Quit
- (iv) Copy section 33 Notice

The Lease shows that the period of the tenancy was from 1st August 2014 to 2nd May 2015, and thereafter on a monthly basis. The ish date is therefore the second day of each month. The

Notice to Quit and Section 33 Notice are both dated 8th August 2019 and both give the termination date as 1st November 2019. This date is not an ish date in terms of the tenancy and therefore the notices are incompetent.

DECISION

I 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. "

After consideration of the application and supporting documentation I consider that the application should be rejected on the basis that it is frivolous or vexatious in terms of Rule 8(1) (a) of the Procedural Rules.

REASONS FOR DECISION

'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 I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

The Notice to quit and Section 33 Notice are both dated 8th August 2019 and both give the termination date as 1st November 2019. This date is not an ish date in terms of the tenancy and therefore the notices are incompetent.

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.

Alison Kelly

Miss Alison Kelly
Legal Member
16th December 2019