



**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

10 Gordonville Road, Inverness ("the property")

Case Reference: FTS/HPC/EV/21/11453

Evelyn Isobel Elaine Gillies, Spittal Shore, Muir of Ord ("the Applicant")

Neil Davidson, 10 Gordonville Road, Inverness ("the Respondent")

1. By application received on 15 June 2021, the Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A Notice to Quit and AT6 Notice were lodged in support of the application.
2. The Tribunal issued a request for further information to the Applicant, asking for a copy of the tenancy agreement. In her response, the Applicant said that the Respondent had been the tenant of the property when she purchased it and there was no written tenancy agreement in place. The Tribunal issued further letters on 3 August, 1 September and 7 October 2021, directing the Applicant to provide as much detail about the tenancy as was available and to explain the basis for the date specified in the Notice to Quit, as this required to be an ish or end date of the tenancy. She was notified that failure to provide a response could result in the application being rejected. The Applicant has not responded.

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 Applicant seeks recovery of possession of an assured tenancy. Rule 5 of the Procedure Rules requires an application under Rule 65 to be accompanied by a copy of the tenancy agreement or as much information about the tenancy as is available. The Applicant has not provided a copy of a tenancy or any information about the start date, duration and term of the tenancy. The Applicant has therefore failed to comply with Rule 65. She has also failed to provide the required information, having been directed to do so in a request for further information by the Tribunal in terms of Rule 5(3) of the Procedure Rules.
7. In the absence of either a written tenancy agreement or information about the start date, duration and term of the tenancy, it is not possible to determine if the Notice to Quit which has been lodged is valid. Before an order for possession can be granted by the Tribunal, the tenancy contract between the parties must be terminated by service of a valid Notice to Quit. The only exception to this is where section 18(6) of the 1988 Act applies. 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.. As the ground referred to the application is ground 1, Section 18(6) would not apply, even if the Applicant had provided evidence that the "terms of the tenancy" made provision for it to be terminated on that ground. As a result, the Applicant cannot seek an order for possession without first terminating the tenancy contract.
8. As the Applicant has failed to comply with Rules 65 and 5(3), and cannot demonstrate that the tenancy contract has been terminated, the Legal Member determines 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
12 November 2021