

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

73 Linton Road, Dundee, DD2 2SX

Case Reference: FTS/HPC/EV/18/1264

ROBERT MARTIN, 5 Playfair Drive, Dundee, DD3 8PD ("the Applicant")

JADE MARTIN, 73 Linton Road, Dundee, DD2 2SX ("the Respondent")

1. On 22 May 2018 an application was received from the Applicant via his solicitor. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an assured tenancy. Attachments were provided with the application form to support the application and these attachments included a tenancy agreement, a copy rent statement, copy AT6 and copy section 11 Notice to Dundee City Council. The application states that recovery of possession is sought on grounds 8,11,12,13 and 14 of Schedule 5 of the Housing (Scotland) Act 1988 ("the Act").
2. The copy tenancy agreement lodged is described as a short assured tenancy. It is dated 8 January 2017. It is unsigned. The grounds for recovery of possession contained within schedule 5 of the Act are listed in the agreement. No AT5 Notice has been lodged with the agreement. No Notice to Quit has been lodged with the application. The AT6 Notice lodged with the application is unsigned and no evidence of service on the Respondent was provided.

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.”

- 5. After consideration of the application, the attachments and correspondence from the Applicant’s solicitor, 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

6. '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.
7. The first issue identified by the Legal member relates to the AT6 Notice. Section 19(4) of the Act states:- “The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is – (a) two months if the notice specifies any of grounds 1,2,5,6,7,9 and 17 in schedule 5 to this Act (whether with or without other grounds); and (b) in any other case, two weeks.” The AT6 lodged with the application was served on 14 April 2018 and specifies 27 April 2018 as the earliest date upon which proceedings can be raised, a period of 13 days. Accordingly, the AT6 Notice served on the respondent does not comply with Section 19 of the Act. In terms of Section 19(1)(b) of the Act it is open to the Tribunal to dispense with the requirement of an AT6. However, this power is not available to the Tribunal if the landlord seeks to recover possession on ground 8 in schedule 5. The legal Member therefore concludes that as no valid AT6 Notice has been served on the respondent, the application should be rejected.
8. The second issue identified by the legal member relates to the tenancy agreement. It is conceded by the Applicant that no written tenancy agreement

exists. There is a written agreement, but it is unsigned, and the tenancy is therefore based only on the occupation of the property and payments of rent. Section 18(6) of the Act 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 there is no signed tenancy agreement specifying the grounds for recovery of possession, the Applicant is not able to rely on this section. Therefore, in order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Applicant has not lodged a valid Notice to Quit with the application. Accordingly, the Applicant has not complied with the requirements of the legislation.

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.

J Bonnar

Josephine Bonnar
Legal Member
12 June 2018