Housing and Property Chamber
First-tier Tribunal for Scotland

DECISION AND STATEMENT OF REASONS OF JAMES BAULD, 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

40a Florence Place, Perth PH1 2BA

Case Reference: FTS/HPC/EV/19/0752

**Mrs Linda Rodgers** ("the applicant")

**Mr Mateusz Gawinski, Mr Jack Ludwicki and Mr Tukasz Terka** ("the respondents")

1. On 6 March 2019, an application was received from the applicant. The application was made under Rule 65 of the Rules being an application by a private landlord for an order for possession of a short assured tenancy. Various documents were provided with the application and additional documents were provided after requests for further information from the Tribunal

DECISION

2. I have considered the application in terms of Rule 8 of the 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."

3. After consideration of the application, the attachments and correspondence from the applicant, I consider 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

4. '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 applied as the test in this application and, on consideration of this test, I have determined that this application is futile, misconceived, and has no prospect of success.

5. This application seeks an order for possession of a property which she states was let under a short assured tenancy. The tenancy agreement which has been produced by the applicant bears to commence on 1 July 2018. It does not specify any termination date or any period during which the tenancy will endure. The relevant provisions of the Housing (Scotland) Act 1988 ("the 1988 Act") require that a short assured tenancy is for a term of "not less than six months" and that prior to the creation of the tenancy the landlord is obliged to serve a Form AT5 upon the tenant stating that the tenancy will be a short assured tenancy. The tenancy does not bear to be for a period of "not less than six months" as no period is specified and no evidence has been provided of the Form AT5 being served and the tenancy accordingly does not appear to meet the requirement to be a short assured tenancy

6. Even if the tenancy is a short assured tenancy, the methods for recovery of

possession of such a tenancy are set out in the Housing (Scotland) Act 1988 ("the 1988 Act"). One method is provided by section 33 of the 1988 Act. That requires the service of a valid Notice to Quit and an additional notice in terms of section 33(1)(d) of the 1988 Act. Each of these notices requires to meet certain legal requirements. The Notice to Quit must give a minimum of twenty eight days' notice to the tenant. The notice under section 33(1)(d) must give a minimum of two months' notice to the tenant of the landlord's intention to raise proceedings for possession. These notices must be served in a manner which is permitted by law. It is not competent for these notices to be validly served by hand delivery by the landlord to the tenant. It is also a requirement that each joint tenant receives an individual copy of the notices. In response to a request for further information from the Tribunal, the applicant has stated that the notice to quit and the section 33 notice were hand delivered to one named tenant on 2 March 2019. She also states that a Form AT6 was similarly delivered. Accordingly any action which bears to be raised under section 33 of the 1988 Act is bound to fail as the notices provided do not meet the statutory requirements. The method of service of these notices on the tenant is incompetent and the notices are accordingly invalid.

7. If the tenancy is not a short assured tenancy, then it will be an assured tennacy. It is possible to seek an order for recovery of possession of an assured tenancy using the provisions of section 18 and 19 of the 1988 Act. That process requires the service of a valid statutory form, the Form AT6.

8. In this case a Form AT6 bears to have been served upon only one tenant on 2 March 2019. A copy of the form has been provided and is dated 2 March 2019 and bears to become effective on the same date.

9. In terms of section 19 the 1988 Act, the form AT6 requires to specify the ground or grounds for possession upon which the landlord intends to rely and to provide a specific period of notice to the tenant. . No period of notice is given. Accordingly the Form AT6 is invalid.

10. For all of the reasons set out above, it is my view that this action has no prospects of success. The tenancy does not appear to be a validly created short assured tenancy. Even if it is, the notices which have been served are invalid. Even if the eviction action was based solely on the tenancy being an assured tenancy and on the procedure set out in section 19 of the 2988 Act, the Form AT6 which has bene served fails to meet the requirements of that section. It follows that this application is premature and has no prospects of success, and must therefore be rejected upon the basis that it is frivolous.

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 Bauld**

James Bauld
Legal Member
10 May 2019