

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

3 Borthwick Street, Glasgow, G33 3UU

Case Reference: FTS/HPC/EV/18/0999

MR PAUL HARTLEY ("the Applicant")

MISS CHERYL COLE ("the Respondents")

1. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a short assured tenancy. Attachments were provided with the application form to support the application and these attachments included a Notice under Section 33 of the Housing (Scotland) Act 1988 and Notice to Quit. A copy of the tenancy agreement was also attached.
2. The tenancy agreement commenced on 30 June 2008, with the initial period of let being for 6 months.
3. There was no provision in the tenancy agreement as to any specific basis on which the tenancy agreement was to continue beyond the initial period of let.
4. The present application is accompanied by a Notice to Quit dated 23 January 2018 purporting to terminate the contractual tenancy agreement on 30 March 2018.

DECISION

5. The circumstances in which an application is to be rejected are governed by 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."

- 6. 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

7. '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 and has no prospect of success.
8. The issue identified in this action is the validity of the Notice to Quit. As the tenancy agreement makes no provision for the basis on which the tenancy was to continue following the initial period of let, the principle of tacit relocation applies. Accordingly, the tenancy would renew for a further six months at the end of the initial period of let and every six months thereafter. Any *ish* date would therefore fall either on 30 June or 30 December each calendar year. The 30 March 2018 was not a valid *ish* date on which the contractual tenancy agreement may have been terminated.
9. The circumstances in which a property let on a short assured tenancy may be recovered upon termination are governed by Section 33 of the Housing (Scotland) Act 1988. Section 33 provides:-

33.— Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act,

the [First-tier Tribunal] shall make an order for possession of the house if [the Tribunal] is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating; [and]

[...]

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the [First-tier Tribunal]⁵ makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.

[(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.]

10. It is clear that, without service of a valid Notice to Quit, it cannot be said that the tenancy agreement has reached its *ish*. A contractual tenancy agreement is continuing between the parties and the ground for possession/eviction stated in the application is not established. Accordingly, the application is rejected on 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.

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Mr Alastair Houston
Legal Member
2 May 2018