



**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

9 Arnott Road, Blackford, Perthshire, PH4 1QE ("the property")

Case Reference: FTS/HPC/EV/19/3438

**Graham McNaughton, Mill Lade, Moray Street, Blackford, Ph4 1QP and
Gilliamn Brown, Lucknow, Abercairney Place, Blackford, PH4 1QB ("the
Applicant")**

**Robert Murray, 9 Arnott Road, Blackford, Perthshire, PH4 1QE ("the
Respondent")**

1. By application dated 22 October 2019 the Applicant seeks an an order for recovery of possession of the property in terms of Rule 65 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement, AT5 Notice, AT6 Notice, Notice to Quit and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. In terms of the application the Applicant seeks an order for possession of the property on ground 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act").
2. Following a request for further information the Applicant submitted a further copy notice to quit and confirmed that they had submitted the application to the Tribunal before the date specified in the Notices as they expected the date to have passed before the applications called for a hearing. The Applicant had also been asked to provide further information regarding the

Notice to Quit as it appeared that it did not seek to terminate the tenancy on an ish date of the tenancy. In his response the Applicant advised that 40 days notice had been given "as per legislation" .

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 application lodged with the Tribunal seeks recovery of possession of an assured tenancy. The Applicant has not served a valid Notice to Quit on the Respondent terminating the tenancy contract. It is a legal requirement that a Notice to Quit must take effect on an ish date of the tenancy. Two notices have been lodged. The first calls upon the Respondent to vacate the property on 27 September 2019, the second on 12 November 2019. The terms of the tenancy agreement is six months from 1 July 2017 and monthly thereafter. It therefore appears that the ish date is on the first of each month. . The Notices to Quit served on the Respondent purport to terminate the tenancy contract on dates which are not ish dates. As a result, the Notice is invalid and the tenancy contract has not been terminated.
7. The Legal Member proceeded to consider the AT6 Notice which has been lodged and whether the application can be considered in terms of Section 18(6) of the Act. 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**". The copy tenancy agreement which is lodged with the application does not specify the grounds for recovery of possession upon which the Applicant seeks to rely. In *Royal bank of Scotland v Boyle* 1999 HousLR it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, "(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of

the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate". The Legal Member notes that the grounds for recovery of possession are not referred to nor narrated in the tenancy agreement which has been lodged. As a result the Applicant has failed to meet the requirements of section 18(6) of the Act and cannot therefore proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation. Furthermore, the Legal Member notes that the AT6 is not in the correct form with relevant sections detailing the grounds for recovery of possession missing from the document. The application to the tribunal was also submitted before expiry of the Notices and was therefore premature. 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.

Josephine Bonnar

Josephine Bonnar
Legal Member
15 November 2019