



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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 Procedural Rules")

in connection with

77 Cairnwell Drive, Mastrick, Aberdeen, AB16 5NJ ("the Property")

Case Reference: FTS/HPC/EV/19/3173

Miss Georgina Beck ("the Applicant")

Mr David Ross ("the Respondent")

1. On 8 October 2019, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules, being an order for possession under section 33 of the Housing (Scotland) Act 1988. The following documents have been provided in support of the application:-

- Copy tenancy agreement
- Copy Form AT5
- Copy Notice to Quit
- Copy Section 33 Notice
- Proof of posting for the Notice to Quit and Section 33 Notice

- Copy Section 11 Notice

DECISION

1. I considered the application in terms of Rule 8 of the 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."

2. 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 appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

3. '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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
4. Section 33 of the Housing (Scotland) Act 1988 provides a basis for recovery of possession of properties let on Short Assured Tenancies. In terms of subsection (1), the Tribunal must be satisfied of three things:- (i) that the short assured tenancy has reached its term (that is to say, its natural expiry); (ii) that tacit relocation is not operating; and (iii) that the landlord has given notice to the tenant stating that he requires possession of the property.
5. In this case, the tenancy agreement commenced on 4 November 2015 and had an initial term of six months, ending on 4 May 2016. Thereafter, in terms of the tenancy agreement, it continued for consecutive periods of one month.
6. The purpose of a notice to quit is to stop tacit relocation from operating. It cannot bring a tenancy to an end at a date arbitrarily selected. To be effective, the end date specified in a notice to quit must coincide with the term date. In this case, there is a new term date each month on the fourth of the month. The

Notice to Quit in this case correctly specifies the date. The difficulty is that, to be effective, it must actually be served.

7. By letters dated 23 October 2019 and 26 November 2019, the Tribunal wrote to the Applicant's Representative requesting evidence that the notices in this case, upon which the Applicant relies, were actually served on the Respondent. On both occasions the Tribunal warned that the Application may be rejected if no response was received. No response was received to those requests. That alone, in my view, is ground for the Application to be rejected under Rule 8(1)(c) of the Procedure Rules.
8. However, there is a copy receipt submitted with the Application which provides details of the "track and trace" reference number of Royal Mail attributable to the notices, which was NJ498383206GB. I have checked that reference number on the Royal Mail website. The item was returned to sender after the holding period for the item was exceeded. I am therefore satisfied that the notices have not been served. That being so, the requirements of section 33 of the Housing (Scotland) Act 1988 have not been met, and the Application cannot succeed.
9. Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedure Rules and, separately, that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.

Andrew Upton
Legal Member
18 December 2019

