

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF LESLEY JOHNSTON 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

20/6 Jamaica Mews, Edinburgh, EH3 6HW

**Case Reference: FTS/HPC/EV/19/2080**

**ROBIN DEMPSEY ("the applicant")**

**EVAN POPPLESTONE ("the respondent")**

1. On 4 July 2019, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules being an application for possession of a short assured tenancy in terms of section 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-

- (i) Copy lease dated 29 and 30 November 2007;
- (ii) AT5 Notice dated 29 and 30 November 2007;
- (iii) Notice to Quit dated 5 April 2019;
- (iv) Section 33 Notice;

## DECISION

2. 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."*

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 I have good reason to believe that the application is vexatious within the

meaning of Rule 8(1)(a) of the Procedural Rules.

## REASONS FOR DECISION

4. In terms of Rule 8(1)(a) of the Procedural Rules, the Tribunal may reject an application if it considers that it is frivolous or vexatious. '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.
5. The applicant and respondent entered into a short assured tenancy in terms of which the date of entry was stated to be "from 30 November 2007 to 1 June 2008 inclusive". The lease made no express provision for tacit relocation in the event that the tenancy continued beyond the period stated in the lease. Accordingly, the lease appears to have continued by operation of tacit relocation on annual periods with ish dates at 30 November and 1 June each year.
6. The Notice to Quit dated 5 April 2019 seeks to terminate the lease on 29 June 2019. The Notice to Quit was not therefore served to terminate the lease at the ish date in terms of the lease.
7. On 22 July the Tribunal administration contacted the applicant's agents to request further information in relation to how the period of notice for the Notice to Quit was calculated and for clarification and evidence on how the Notice to Quit and section 33 Notice were given to the tenant.
8. On the same day the applicant's agents responded to advise that the move in date on their database is marked as 29 November 2007 and the documents (the Notice to

Quit) were pre-populated using that information. The applicant's agent also advised that the Notice to Quit and Section 33 Notice were delivered to the respondent's address on 10 April 2019 by Sheriff Officers, however not certificate of service was provided.

9. The response from the applicant's agent did not provide any further information as to why the Notice to Quit was not served to coincide with the ish.
10. Since the Notice to Quit was not served to coincide with the ish, the Notice to Quit is invalid and the application for eviction of the respondent is bound to fail.
11. For all these reasons, the Legal Member concludes that the application is frivolous, misconceived and has no prospect of success. The application is rejected in terms of Rule 8(1)(a) of the Procedural Rules 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.

**Lesley Johnston**

Lesley Jonnston  
Legal Member  
7 August 2019