



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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**

**12 Whiteacres Road, Glasgow G53 7LJ ("the Property")**

**Case Reference: FTS/HPC/EV/23/3325**

**Terry McDermott, 5 Parkmeadow Avenue, Glasgow G53 7ZG("the Applicant")**

**Nicole Sproul, 12 Whiteacres Road, Glasgow G53 7LJ ("the Respondent")**

1. By Application dated 1 September 2023 the Applicant sought an order for possession of the Property in terms of Rule 109 of the Rules. The documents produced by the Applicant were a tenancy agreement which commenced on 22 March 2022; a notice under section 33 of the Housing (Scotland) Act 1988 dated July 2023 (no day stated) and seeking possession of the Property on 17 July 2023 and a "Final Eviction Notice" dated April 2023 (no day stated) seeking possession of the Property on 15 September 2023. In response to a request by the Tribunal for further information the Applicant lodged a copy section 11 notice; a photograph of the first page of a notice to leave and a photograph of a notice to leave being handed to a person stated to be the Respondent. The Applicant told the Tribunal that he had hand delivered a notice to leave to the Respondent on 10 November 2023.

## DECISION

2. 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.

3. **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**

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 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.
5. The tenancy agreement produced by the Applicant commenced on 22 March 2022 and must therefore be a private residential tenancy. The only manner in which such a tenancy can be terminated is by service of a notice to leave in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a copy of the first page of a notice to leave and told the Tribunal it had been served by hand on 10 November 2023. The application for an eviction order was lodged on 1 September 2023. The notice to leave was therefore served after the application was made. In terms of section 54 of the 2016 Act a landlord may not make an application for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice. The application was made in breach of section 54 of the 2016 Act. In these circumstances, the Legal Member determines 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.



Joan Devine  
Legal Member  
28 February 2024