

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

8/16 East Pilton Farm Avenue, Edinburgh, EH5 2GB ("the Property")

Case Reference: FTS/HPC/EV/23/3605

Mr Zamin Hasan, 88 Craigleith Hill Crescent, Midlothian, Edinburgh, EH4 2JS ("the Applicant")

Mr Tomas Ashton, 8/16 East Pilton Farm Avenue, Edinburgh, EH5 2GB ("the Respondent")

1. The Applicant submitted an application dated 11 October 2023 in terms of Rule 109 of the Rules. In support of the application, the Applicant submitted a copy of a tenancy agreement, notice to leave and section 11 notice.

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 the documents submitted by the Applicant 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 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 Tribunal sent an email to the Applicant's representative on 9 November 2023. In that email, the Tribunal made a request for further information in relation to a number of matters. One of the issues raised was the validity of the Notice to Leave ("NTL"). The NTL was dated 3 July 2023 and was served on that date. Part 4 of the NTL states that an application would not be made to the Tribunal before 25 September 2023. The Applicant was asked on what basis the Tribunal could proceed if the NTL is invalid. The Applicant's representative responded by email on 6 December 2023 and advised that the Respondents were given 84 days' notice. The Tribunal sent a further email to the Applicant's representative

on 8 January 2024 after consideration of the tenancy agreement. The Tribunal advised that the NTL had been served by email to a different email address to the one recorded in the tenancy agreement. The Tribunal asked for evidence that the tenants had consented to accept service of notices to that email address. The Applicant's representative was asked for an explanation as to how the NTL meets the requirements of the 2016 Act. The Applicant's representative responded by email on 1 January 2024 advising that one tenant had provided a new email address and that from April 2023 all communication was sent to both tenants. It was also submitted that the NTL was valid, but with no detailed explanation about that. The Tribunal sent a further email to the Applicant's representative on 22 February 2024. The Tribunal advised that the response previously received did not confirm that the tenants had consented to notices being served at a new email address. Evidence of consent was requested. The Tribunal asked again for an explanation as to the validity of the NTL. The Applicant's representative responded by email on 7 March 2024. No evidence was produced to demonstrate that the tenants had consented to notices being served at a new email address. It was accepted that the period of notice had been miscounted.

1. The NTL produced by the Applicant is invalid and does not support the application. The NTL produced was served at an email address which differs to the one noted in the tenancy agreement. The email was dated 3 July 2023 to the tenants attaching the NTL. The NTL indicates that an application would not be submitted to the Tribunal before 27 September 2023. In terms of section 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016, it is assumed that the tenants received the notice 48 hours after it is sent. On the basis that the notice was served on 3 July 2023, the tenants would be assumed to have received it on 5 July 2023. The period of notice therefore did not expire until 27 September 2023. However, part 4 of the notice to leave states "An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period...." The date which should have been entered at part 4 was 28 September 2023. The NTL is therefore invalid. No evidence was produced to demonstrate that the tenants received the NTL before 5 July 2023.
6. The Legal Member therefore 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.

Nicola Irvine
Legal Member
28 March 2024