



**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

Flat 2/2 3 Shaftesbury Street, Clydebank, G81 4DS ("the property")

Case Reference: FTS/HPC/EV/20/0146

Angela Dodge, Flat 105 4 Sutton Park Road, Sutton, SM1 2GB ("the Applicant")

**John Berry, Flat 2/2 3 Shaftesbury Street, Clydebank, G81 4DS ("the
Respondent")**

1. By application received on 16 January 2020 the Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988. A copy tenancy agreement, Notice to Quit and AT6 were lodged in support of the application. On 31 January 2020 the Tribunal issued a request for further information in terms of Rule 5(3) of the Rules. The Applicant was advised that the Notice to Quit appeared to be invalid and the AT6 appears to be incomplete as part 3 of the prescribed form was missing. The Applicant was asked to provide information as to the validity of the Notices, rectify the position regarding the defective notices and/or clarify the basis upon which the application could proceed. The Applicant was advised that a response was required by 14 February 2020 or the application may be rejected. No response was received. On 28 February 2020 a further letter was issued to the Applicant advising that a response was required to the letter of 31 January 2020 by 6 March 2020 or the application may be rejected. No

response was received.

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, the supporting documentation and correspondence from the Applicant, 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. Rule 5(c) of the Rules stipulates that, "If it is determined that an application has not been lodged in the prescribed manner", the Tribunal may make a request for further documents to be lodged." The Applicant has been issued with letters requesting further information and documentation on two occasions. The Applicant has failed to respond to both requests.
6. The Notice to Quit lodged with the application is defective as the date specified in the Notice does not coincide with an ish date of the tenancy. In addition, the AT6 Notice is defective as is incomplete. The Applicant has failed to respond to requests from the Tribunal to address these issues. In the absence of a valid to Notice to Quit and AT6 Notice, and a response from the Applicant to a request for further information to be lodged, 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.

Josephine Bonnar
Legal Member
1 July 2020