

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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

1/L 22 Muirend Street, Kilbirnie, KA25 7DQ

Case Reference: FTS/HPC/EV/19/1909

Mr Dave Monaghan, 61 New Cavendish Street, London, W16 7AR ("the applicant")

Mr James Murphy, 1/L 22 Muirend Street, Kilbirnie, KA25 7DQ ("the respondent")

On 19 June 2019, an application was received from the applicant's representative. The application was made under Rule 66 of the Procedural Rules being an application for possession on termination of a Short Assured Tenancy. Along with the application form the applicant's representative lodged a tenancy agreement, AT5, landlord notice, Notice to Quit and a Notice to Local Authority.

By letter dated 5 July 2019 the Tribunal asked the applicant's representative for further information. The Tribunal asked for evidence of service of the Section 33 Notice and Notice to Quit on the tenant, evidence of service of the Section 11 notice on the local

authority, information as to why the Section 33 Notice referred to a short assured tenancy commencing on 12 November 2018 and a copy of the title deeds for the Property showing who the heritable proprietor is. The applicant's representative was asked to respond by 19 July 2019 and was advised that if they did not respond in that time the President may decide to reject the application. The applicant's representative emailed the Tribunal on 18 July 2019 advising that evidence of service of the notice could not be provided as the Royal Mail Tracker was currently unavailable and provided the reference number. They resent a copy of the Notice to Quit and Section 11 Notice but did not advise how the section 11 Notice had been served. They advised that the Section 33 Notice referred to a tenancy commencing 12 November 2018 as that was the date that they had taken over management of the Property from the previous agent. The applicant's representative also questioned why the Tribunal required the title deeds but said they had requested these from the landlord who was currently in hospital and these would be forwarded as soon as they were received.

The Tribunal wrote again to the applicant's representative on 6 August 2019 advising that the information provided by them in response to the Tribunal's letter of 5 July was not sufficient. The Tribunal asked again for evidence of service of the notices by recorded delivery. The Tribunal repeated its request for sight of the title deeds to the Property. The Tribunal requested a response by 19 August 2019 failing which the President may decide to reject the application. No response has been received.

DECISION

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."

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 it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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.

The applicant's representative has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's representative's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant's representative is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

Accordingly, for this reason, this application must be rejected upon the basis 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.

Anne Mathie

Anne Mathie
Legal Member
30 August 2019