

**DECISION AND STATEMENT OF REASONS BY THE 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

2 Maxwell Drive, Erskine, PA8 6BG **the Property**

Case Reference: FTS/HPC/EV/19/2028

The Parties:-

Mr Anthony Sneider, Mrs Sylvia Sneider 18 Millfield Wynd, Erskine, PA8 6JF

Applicants

McArthur Renton Letting Ltd, 6A Mains Drive, Erskine, PA8 7JQ

Applicants' Representative

Miss Leighanne Kerr, 50 Dickens Avenue, Parkhill, Clydebank

Respondent

Background

1. By Application received on 1st July 2019 the Applicants applied to the Tribunal under Rule 65 of the Procedural Rules for an order for possession in relation to an assured tenancy.
2. In terms of Rule 8 of the Procedural Rules the Legal Member of the Tribunal under the delegated powers of the Chamber President considered whether there were grounds to reject the Application. The Legal Member determined to reject the Application on the basis that he had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

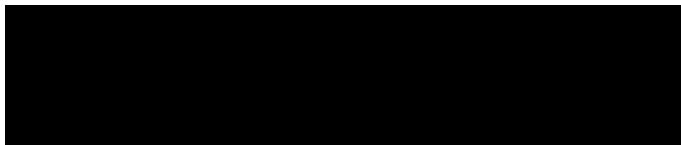
Reasons for Decision

3. The Legal Member considered the Application together with supporting documents which were lodged.

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. 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 the Legal Member had 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 AT6 Notice, lodged with the Application and served on the Respondent by Sheriff Officer on 9th November 2018, states that proceedings will not be raised before 24th November 2018. Section 19(7) of the Housing (Scotland) Act 1988 states that a Notice shall cease to have effect 6 months after the date on or after which proceedings for possession to which it relates could have been raised. Given that the Application was lodged in July 2019 the Legal Member has determined that the Application has no prospect of success and that the Applicants/ their Representative will require to re-serve a fresh AT6 Notice upon the Respondent. The Legal Member also noted that a Notice to Quit had not previously been served on the Respondent.
6. Therefore, having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Legal Member concluded that the Application is frivolous and has rejected it under Rule 8(1)(a) of the Procedure Regulations.

Decision

7. The Legal Member, with delegated authority from the Chamber President, determined to reject the Application as being frivolous in terms of Rule 8(1)(a) of the Procedure Regulations.



G McWilliams
Legal Member

3rd July 2019

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:-

A party 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 on request.