



**DECISION AND STATEMENT OF REASONS OF MELANIE BARBOUR, 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**

**Case reference FTS/HPC/EV/21/2703**

**Parties**

**Horsburgh Murray Partnership (Applicant)**

**Mr Daniel Keane (Respondent)**

**3b Millport, Hawick, TD9 9DG (Property)**

1. On 29 October 2021, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules, being an application to recover possession of a short assured tenancy.
2. By letters from the Tribunal dated 18 November and 9 December both 2021 and 20 January 2022, the Tribunal requested further information including :-
  - a. The copy tenancy agreement ; and
  - b. Clarification as to which rule the application was being made under.
3. Various responses were received from the applicant's agent, culminating in correspondence that they now intended to make an application under rule 65 and that therefore they intended to serve an AT6 Form in support of that application. They were asked if they intended to withdraw the current application given that there was outstanding information, (given that they were now serving an AT6 Form). No response has been forthcoming from the applicant's agent.

## **DECISION**

4. 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."

5. 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**

6. The Tribunal had requested further information to support this application from the applicant. The applicant has not provided the information requested. Further, the applicant's agent has indicated that they wish to amend the application to one under rule

65 and they now intend to serve an AT6 Form as part of the statutory requirements in terms of section 19 of the Housing (Scotland) Act 1988.

7. The applicant's failure to provide the requested information to support the application, and the fact that they have not served the necessary notice to proceed under rule 65 or asked that the requirement to serve that notice should be dispensed with, gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unable to do so in order to progress this application under rule 65 or 66.
8. Accordingly, for this reason, the 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.

# M Barbour

Melanie Barbour

Legal Member

22 February 2022