



**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 1/1 7 Renfield Street, Renfrew, PA4 8RF ("the property")**

**Case Reference:** FTS/HPC/EV/19/3385

**Allison Matheson, 4 Rudds Close, Buckingham, Buckinghamshire, MK18 3QZ  
("the Applicant")**

**Gary McFadzean, Flat 1/1 Renfield Street, Renfrew, PA4 8RF")**

1. By application dated 22 October 2019 the Applicant applied to the Tribunal for an eviction order in terms of Rule 109 of the Rules. The Applicant lodged a copy private residential tenancy agreement, copy Notice to leave and copy notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 in support of the application.
2. On 4 November 2019 the Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide information regarding service of the Notice to leave and clarification of the validity of the notice as it appeared that the required period of notice to the Respondent had not been given. On 7 November 2019 the Applicant responded stating that 28 days notice had been given, that the notice had been emailed on 30 August 2019 and that the application was not lodged until 22 October 2019.

## DECISION

3. 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.”*

4. 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

5. '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.
6. The Legal Member notes that Notice to leave is dated 30 August 2019 and appears to have been emailed to the respondent on that date. The Notice stipulates that "an application will not be submitted to the Tribunal for an eviction order before 27/09/2019. This is the earliest date that the Tribunal proceedings can start **and will be at least the day after the end date of the relevant notice period** (28 days or 84 days depending on the eviction ground or how long you have occupied the let property). Section 62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 (2the Act") provides that a notice to leave " specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier tribunal. Section 62(4) states " **The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire**". Section 62(5) states "For the purposes of subsection (4) **it is assumed that the tenant will receive the notice to leave 48 hours after it is sent**".
7. The Legal member notes that the date specified in the Notice to leave lodged with the application is 27 September 2019. This is exactly 28 days after the date upon which the Notice was sent by email. The date stipulated is therefore incorrect and the Notice does not meet the requirements of Section 62 of the Act. The Applicant has therefore failed to meet the requirements of the Act and as such the Tribunal cannot entertain the application for an eviction order.
8. The Legal member therefore concludes 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 –

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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

Josephine Bonnar  
Legal Member  
15 November 2019