

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS LEGAL MEMBER OF THE  
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

Flat 1 up, right, 24 Primrose Street, Glasgow G14 0TF

**Case Reference: FTS/HPC/EV/19/3725**

**ILUASA LIMITED, 5 Etive Drive, Bearsden, Glasgow G61 2ET ("the Applicant")**

Represented by Douglas McBain, Contempo Property, Milngavie Enterprise Centre,  
Ellangowan Court, Milngavie G62 8PH

**ANTOINE SINCLAIR, Flat 1 up, right (1/R) 24 Primrose Street, Glasgow G14 0TF ("the  
Respondent")**

**BACKGROUND**

1. On 21 November 2019 the Applicant's Representative lodged an application for eviction of the Respondent from the property 1/R, 24 Primrose Street, Glasgow G14 0TF ('the property'). The application was made in terms of section 18 of the Housing (Scotland) Act 1988 on the basis of non-payment of rent.

**DECISION**

2. For the reasons given below this application is rejected.

### REASONS FOR DECISION

3. 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; . . .*

*(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. For the purposes of this rule the word 'frivolous' does not have its ordinary day to day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.

5. The application was made under section 18 and grounds 8, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988. Section 18 requires the Tribunal to be satisfied that the

statutory requirements for recovery of possession have been satisfied.

6. The first requirement is that terms of section 18(6) of the 1988 Act it is a pre-requisite for an order for possession that –
  - (a) The ground for possession is ground 2 or ground 8 in Part I of schedule 5 to the [1988 Act] or any of the grounds in Part II of that schedule other than grounds 9, 10, or 17; and
  - (b) The terms of the tenancy make provision for it to be brought to an end on the ground in question,  
unless the tenancy is a statutory assured tenancy.
7. It is plain from the Lease dated 22 June 2017 that the terms of the tenancy (Lease) do not make provision for it to be brought to an end on the basis of grounds 8, 11, or 12 of schedule 5 to the 1988 Act. None of these grounds are set out in the Lease nor are they even referred to. The provisions of clause (11) in the Lease are totally inadequate in that regard.
8. Furthermore there is nothing to indicate that the tenancy has become a statutory assured tenancy. The tenancy was due to run for 12 months to 21 July 2018 in terms of the Lease. After this there appears to have been tacit relocation. For it to become a statutory assured tenancy a valid notice to quit on 20 or 21 July 2019 (the “ish” or expiry date of the tenancy under tacit relocation (automatic silent re-lease)) would have been required and the tenant to have remained in possession after that date. It is plain that no such notice has been given. The notice that there is requires the respondent to quit on 5 November 2019. Such notice is clearly premature and invalid.
9. In these circumstances I take the view that the pre-requisite of section 18(6)(b) cannot be met and that the current application is misconceived and doomed to fail.
10. Accordingly, for these reasons, this application must be rejected upon the basis that the application is ‘frivolous’ within the legal meaning of Rule 8(1)(a) of the Procedural Rules.

## **What you should do now**

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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.

David Bartos

David Bartos  
Legal Member acting under delegated powers  
13 December 2019