



DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

Tiny Home Plot, Balhaldie Farm, Braco, Dunblane, FK15 0NB ("the Property")

Case Reference: FTS/HPC/CV/22/2943

Greenhaven Ecology Centre CIC, Balhaldie Farm, Braco, Dunblane, FK15 0NB ("the Applicant")

Ms Sue Rumball, Tiny Home plot, Balhaldie Farm, Braco, Dunblane, FK15 0NB ("the Respondent")

1. The Applicant seeks an order for payment in terms of Rule 111 of the Rules and Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a copy of the tenancy agreement, Notice to Leave served on the Respondent, bank statements, witness statements, photographs and copy letters issued to the Respondent. The Tribunal issued a request for further information on 15 September 2022. In respect of a related application for eviction, the first matter the Applicant was asked to clarify was whether the house had been leased to the tenant in terms of a private residential tenancy or whether it was a plot of land which was leased. The Applicant was asked to clarify how it considered the lease to fall within the definition of a private residential tenancy under section 1 of the 2016 Act. The Applicant responded on 28 September 2022, explaining that:-

"The mobile house on the plot is owned by the tenant. The lease is to

cover the plot of land in which the tiny home is located.

The land on which the tenant is renting is a hard standing area within farm grounds, an area separate from the farm and any agricultural use (also it is not in a field). The house in which the tenant lives in is both a mobile home and a dwelling house, as it has access to mains electricity and water and the house is the tenant's primary residence."

DECISION

2. 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.

3. **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

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 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.
5. The Legal Member considers that the leasing arrangements between the parties cannot constitute a private residential tenancy as defined by the 2016 Act. In reaching this view, consideration was given to sections 1 and 2 of the 2016 Act. Section 1 of the 2016 Act defines the meaning of a private residential tenancy as follows:

Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

Section 2 of the 2016 Act provides

Interpretation of section 1

(1) This section makes provision about the interpretation of section 1.

(2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.

(3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.

(4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—

(a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and

(b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

(5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

6. Although the information provided by the Applicant suggests that the property is the tenant’s only or principal home, the Legal Member considers that there is no private residential tenancy in force in respect of the property. The purpose of the legislation is clearly to regulate leasing arrangements between parties involving a separate dwelling. The Applicant has an agreement with the Respondent to lease a plot of land, not a dwelling. It is stated that the mobile home is owned by the tenant. Therefore it cannot be said that the “property is let to an individual as a separate dwelling.”

7. The Tribunal has jurisdiction to determine applications for civil proceedings by virtue of section 71 of the 2016 Act, which provides

First-tier Tribunal’s jurisdiction

(1) In relation to civil proceedings arising from a private residential tenancy—

(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),

(b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—

(a) the prosecution of a criminal offence,

(b) any proceedings related to such a prosecution.

8. On the basis that there is no private residential tenancy in force, the Tribunal does not have jurisdiction to determine this application. The Legal Member therefore determines 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 –

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.



Nicola Irvine
Legal Member
28 October 2022