

**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

32 Aurs Crescent, Barrhead, Glasgow, G78 2LU ("the Property")

Case Reference: FTS/HPC/EV/23/0632

Angela Smith, James Smith, 15 Crebar Drive, Barrhead, Glasgow, G78 2DF ("the Applicants")

David Moore, Lily Rose Moore, Nicola Moore, 32 Aurs Crescent, Barrhead, Glasgow, G78 2LU ("the Respondents")

1. The Applicants submitted an application for an eviction order in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). No supporting documents were lodged with the application.

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 Tribunal wrote to the Applicants on 1 March 2023 requesting further information to allow the application to be considered. The information requested was as follows:
 - a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give
 - a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy ("AT6")

- evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”) being served by the landlord on the tenant
- a copy of the notice to quit served by the landlord on the tenant
- evidence of the notice to quit being served by the landlord on the tenant
- evidence tending to show that the possession ground or grounds has been met
- a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003
- evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 being provided to the local authority

The Applicants were advised that the Tribunal required a response with the necessary information by 8 March 2023, otherwise the application may be rejected. No response was received from the Applicants.

6. The Tribunal wrote to the Applicants again on 6 April 2023, noting that no response had been received to earlier correspondence and asking the Applicants to provide the necessary information. The Applicants were advised that a response was required by 20 April 2023 otherwise the President may decide to reject the application. No response was received from the Applicants.
7. Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) sets out the requirements of making an application. In terms of that Rule, the Chamber President or another member with delegated powers of the Chamber President may request further documents. The Rule provides that an application is not accepted where the outstanding documents requested are not received within a reasonable period.
8. The Applicants have been given two opportunities to provide the required information and have failed to respond. 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

31 May 2023