



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

7 West End, West Calder, Livingston EH55 8EH ("the property")

Case Reference: FTS/HPC/EV/23/0351

Marion Moynagh, 24 Lille Park, Belfast BT10 0LR ("the Applicant")

**Stirling Property Shop, 24 Friars Street, Stirling FK8 1HA ("Applicant's
Representative")**

**Giles Manwearing, 7 West End, West Calder, Livingston EH55 8EH ("the
Respondent")**

1. The Applicant seeks an order for possession of the property in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). A copy of a private residential tenancy agreement, Notice to Leave dated 4 November 2022 ("NTL"), email serving the NTL dated 14 November 2022 and an incomplete section 11 notice were lodged in support of the application.
2. The Tribunal issued a request for further information on 14 March 2023 to the Applicant's Representative, directing the Applicant to provide further information including clarification of the identity of the Applicant as the name on the Application differed to that on the title, a request for a complete section 11 notice as the one provided was incomplete and clarification of the date of service of the NTL as on the basis of the documentation provided insufficient

notice had been given to the Respondent. The Tribunal issued a further letter to the Applicant's Representative on 2 May 2023 seeking a response to the letter of 14 March 2023. The Applicant's Representative did not respond.

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 documents lodged 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 Procedural Rules.

Reasons for Decision

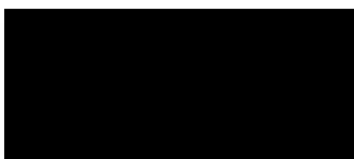
5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application 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 Applicant seeks recovery of possession of a private residential tenancy. In terms of section 50(1) of the 2016 Act a private residential tenancy comes to an end if the tenant has received a notice to leave from the landlord. The Applicant has failed to provide evidence that the tenant in this case received the length of notice required by section 62 of the Private Housing (Tenancies) (Scotland) Act 2016. In these circumstances, the Legal Member 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.



Joan Devine
Legal Member
14 June 2023