



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS, 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 Procedural Rules")

in connection with

26 Stewarton Road, Thornliebank, Glasgow G46 7UZ

Case Reference: FTS/HPC/EV/19/3105

Mr Abdul Shakoor, 20 Brewery Street, Dumfries DG1 2RP ("the applicant")

Represented by Saqib Shakoor, 20 Brewery Street, Dumfries DG1 2RP

Mr Sehrina Ashraf, 26 Stewarton Road, Thornliebank, Glasgow G46 7UZ

("the respondent")

1. On 1 October 2019 an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application under section 18 and ground 1 of schedule 5 of the Housing (Scotland) Act 1988 seeking eviction of the respondent.

DECISION

2. 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; 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, the attachments and correspondence from the applicant, I consider that the application must be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

4. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. 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 *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*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. In terms of the common law an eviction can be sought only by an owner of the property in question. In the present case the first names of the applicant and owner were not the same. In terms of section 19(4) of the 1988 Act it is a pre-requisite of an order for possession that the AT6 notice informs the tenant that eviction proceedings under ground 1 will be not be raised earlier than two months from the date of service of the notice. The AT6 notice produced by the applicant indicated that the proceedings could be raised earlier than two months from the date of its service. In terms of ground 1 the applicant requires to establish that he or his wife occupied the property as his principal home before the property was let to the respondent.
6. By letters from the Tribunal dated 21 October and 20 November both 2019 the applicant's representative was asked to provide further information in relation to those matters and other matters under warning that if no reply was received the President might reject the application. No reply has been given to that inquiry. As that inquiry related to matters fundamental to the application I consider that there is good reason to believe that it would not be appropriate to accept this application under Rule 8(1)(c) of the Procedural Rules. In these circumstances I am obliged to reject it.

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.

David Bartos
Legal Member
13 December 2019