



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
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

**1/ 2, 42Eversley Street, Glasgow ("the Property")**

**Case Reference: FTS/HPC/EV/22/4432**

**Asdena Stars Properties Ltd, Address Unknown ("the Applicant")**

**Amy Smart, 1/ 2, 42 Eversley Street, Glasgow ("the Respondent")**

1. The Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a tenancy agreement and Notice to Leave in support of the application.
2. The Tribunal issued a request for further information. The Applicant was asked to clarify whether the application could proceed on ground 5 of schedule 3 because the Applicant is a limited company and not a natural person. The Applicant responded and provided a letter from a director of the company stating that he required to move due to a relationship breakdown

**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 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

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 Landlord and heritable proprietor of the property is Adsena Stars Properties Ltd, a private limited company. In the application, the Applicant states that a director of the company requires to live in the let property due to relationship breakdown. In the Notice to leave which accompanied the application, the Applicant stated that the property is required for a family member of a director who they can no longer accommodate.
7. Ground 5 of Schedule 3 of the 2016 Act states that "it is an eviction ground that a member of the landlord's family intends to live in the let property". Family member is defined in sub-paragraphs 4 and 5 and includes parents, children, siblings and people who are in a qualifying relationship (such as marriage or civil partnership) with the landlord or relative of the landlord. The Applicant landlord in the present application is not a natural person, but a limited company which is a separate legal entity from its directors and shareholders. Ground 5 does not apply to relatives of directors of companies and a limited company does not have family members. The Legal Member is therefore satisfied that the application based on ground 5 cannot succeed.
8. 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.

Josephine Bonnar  
Legal Member  
17 March 2023