



**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 Procedural Rules")**

in connection with

Flat 1/ 2 10 Thornbank Street, Yorkhill, Glasgow, G3 8SU

Case Reference: FTS/HPC/CV/20/1198

**Tony Brown, Flat 1/ 2 10 Thornbank Street, Yorkhill, Glasgow, G3 8SU ("the
Applicant")**

**Andrei (Surname Unknown), Flat 1/ 2 10 Thornbank Street, Yorkhill, Glasgow, G3
8SU ("the Respondent")**

1. By application received on 25 May 2020 the Applicant seeks an eviction order against the Respondent. The email from the Applicant states that the Applicant is seeking an order to evict a lodger from the property.
2. On 3 June 2020 the Tribunal issued a request for further information. The Applicant was advised that he had submitted the wrong form, Form F which relates to civil proceedings, and that he required to submit a Form E if he was seeking an eviction order. The Applicant was also asked to clarify the type of

tenancy which was the subject matter of the application, as it did not appear that the Tribunal had jurisdiction to deal with his application. In his response the Applicant confirmed that he also resided at the property and that he had rented out a bedroom to the Respondent, a lodger, a few months previously. A further letter was issued to the Applicant which referred the Applicant to the relevant sections of the legislation and asked him to address the issue of jurisdiction. In response the Applicant advised that he had been told to apply to the Tribunal. He also submitted a Form E which indicated that the tenancy had started after 1 December 2017. The form indicated that he was seeking an eviction order on grounds 1, 3, 4 and 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. No documents were lodged in support of the application.

DECISION

3. The Legal Member 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."

4. After consideration of the application, the attachments and correspondence from the Applicant, the Legal Member determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a).

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. In terms of Section 16 of the Housing (Scotland) Act 2014 the functions and jurisdiction of the Sheriff in relation to tenancies under the Rent (Scotland) Act 1984 and Housing (Scotland) Act 1988 were transferred to the Tribunal. The Tribunal's jurisdiction in relation to private residential tenancies arises from the Private Housing (Tenancies) (Scotland) Act 2016. The Legal Member notes that the "tenancy" which is the subject of the application commenced a few months prior to the application was submitted, according to the information provided by the Applicant. As a result it cannot be an assured tenancy in terms of the 1988 Act, or a tenancy in terms of the 1984 Act, as neither of these could be created

after 1 December 2017.

7. In terms of Section 1 Private Housing (Tenancies) (Scotland) Act 2016 “(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 tenants only or principal home, and (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.”. Paragraph 7 of Schedule 1 states, “A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.” Paragraph 8 – “ This paragraph applies to a tenancy if – (a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and (b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who – (i) has the interest of the landlord under the tenancy, and (ii) has the right to use the shared accommodation in the course of occupying that person’s home.”
8. The Legal Member notes that the Applicant has confirmed that he owns the property and that the Respondent has been a lodger at the property for a number of months. The Applicant has also confirmed that he resides at the property.
9. The Legal Member is satisfied that the tenancy in question is not a private residential tenancy in terms of the 2016 Act or one of the tenancies stipulated in Section 16 of the 2014 Act. As a result, the Tribunal does not have jurisdiction to deal with the application.
10. The Legal member determines that as the Tribunal does not have jurisdiction to deal with the application, 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

**Josephine Bonnar
Legal Member
30 June 2020**