



**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

**149 Dickson Drive, Irvine ("the Property")**

**Case Reference: FTS/HPC/EV/22/2130**

**Stephen Smith, 6 John Parker Avenue, Irvine ("the Applicant")**

**James McHendrie, 149 Dickson Drive, Irvine ("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 number of requests for further information to the Applicant. The Tribunal noted that the application was based on ground 1 of schedule 3 of the 2016 Act - the landlord intends to sell the property. However, the Notice to leave specified ground 5 - a member of the landlord's family intends to live in the let property. In his response, the Applicant initially provided further copies of the same Notice. In response to subsequent letters, the Applicant lodged two further notices to leave, both based on ground 1. The first is dated 30 November 2022 and states that the earliest date that proceedings can be raised is 8 December 2022. The second is dated 6 January 2022 and

specifies that the earliest date that proceedings can be raised is 1 April 2023.

## **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 has not provided a valid notice to Leave in support of the application. The relevant section of the 2016 Act are as follows:-

### **52 Applications for eviction orders and consideration of them**

...

- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
  - (a) subsection (3), or
  - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) **An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.**

### **62 Meaning of notice to leave and stated eviction ground**

- (1) References in this Part to a notice to leave are to a notice which—
  - (a) is in writing,
  - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
  - (c) **states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and**
  - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

...

7. The application was accompanied by a Notice to Leave which the Applicant states was sent by post on 30 March 2022 and email on 2 April 2022. However, this Notice did not specify the ground upon which the Applicant intended to seek an eviction order. The Notice does not comply with Section 62 of the 2016 Act and is not a valid “Notice to leave”.
8. The second Notice to leave provided by the Applicant was issued to the Respondent on 30 November 2022, four months after the application was lodged with the Tribunal. It did not accompany the application and is also invalid as the date specified in Part 4, the earliest date that proceedings can be raised, postdates the lodging of the application and does not give the correct period of notice.
9. The third Notice to leave lodged by the Applicant appears to specify the correct eviction ground and give the correct period of notice. However, the date specified in the notice is 1 April 2023, which has not yet passed. Furthermore, it was served almost 6 months after the application was lodged with the Tribunal. Although Section 52(4) of the 2016 Act makes provision for applications to be lodged before the expiry of the notice period, if the Tribunal considers it reasonable, there is no provision for applications to be considered where the notice to leave was not served until several months after the application was lodged.
10. As the application to the Tribunal has to be “accompanied” by a “Notice to Leave” which has been given to the Respondent, the Applicant has failed to comply with Section 52 of the 2016 Act and the Tribunal cannot entertain the application.
11. The Legal Member therefore determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

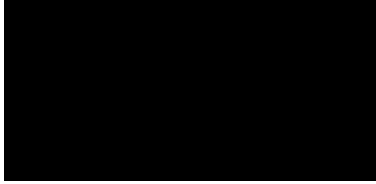
### **What you should do now**

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  
20 February 2023