

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

---



**Statement of decision under Rule 39(1) of the First Tier Tribunal for Scotland Housing and Property Chambers (Procedure) Regulations 2017 in relation to a decision by the First Tier Tribunal to Review its own decision in connection with the case:-**

**CHAMBER FILE REFERENCE: FTS/HPC/EV/21/2553**

**THE PARTIES:**

**MRS SHARON CUTHBERTSON, 3 DUFFIELD DRIVE, LARGS, KA30 8ED  
(APPLICANT)**

**MR SCOTT PYPER, 39 KELVIN STREET, LARGS, KA30 9BD  
(RESPONDENT)**

**THE PROPERTY: 39 KELVIN STREET, LARGS, KA30 9BD (THE  
PROPERTY)**

**TRIBUNAL MEMBER: VIRGIL CRAWFORD (LEGAL MEMBER)**

**BACKGROUND**

1. By application dated 10<sup>th</sup> October 2021 the Applicant presented an application to the Tribunal seeking an order for the eviction of the Respondent from the property;
2. The application proceeded on the basis that a member of the landlord's family intended to reside in the property, that being a ground of eviction in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), Schedule 3, Ground 5;
3. At the time of the application it was indicated that the Applicant's sister intended to reside in the Property. Thereafter, in the course of enquiries being made by the Tribunal, it was indicated that the Applicant's sister had secured alternative accommodation, that the Applicant's sister in law – her deceased brother's wife – and her nephew would occupy the Property instead;
4. Having considered the further information provided in relation to the identity of the persons who intend to occupy the Property, the First

Tier Tribunal for Scotland, Housing and Property Chamber, in accordance with powers conferred upon it in terms of Rule 39(1) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”), reviewed its decision dated 9<sup>th</sup> February 2022 to accept the application and the Tribunal thereafter rejected the application in accordance with rule 8 (1)(a) of the FTT Regs on the basis that the application is frivolous or vexatious;

## **REASONS FOR DECISION**

5. Rule 8 of the FTT Regs provides as follows:-

### ***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***

***€ 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.***

6. Ground 5 of schedule 3 of the 2016 Act provides as follows:-

***5(1)It is an eviction ground that a member of the landlord's family intends to live in the let property.***

***(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—***

***(a)a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and***

***(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.***

***(3)A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—***

***(a)the family member is incapable of having, or expressing, that intention, and***

***(b)the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the***

**family member's only or principal home for at least 3 months.**

**(4)For the purposes of this paragraph, a person is a member of the landlord's family if the person is—**

**(a)in a qualifying relationship with the landlord,**

**(b)a qualifying relative of the landlord,**

**(c)a qualifying relative of a person who is in a qualifying relationship with the landlord, or**

**(d)in a qualifying relationship with a qualifying relative of the landlord.**

**(5)For the purposes of sub-paragraph (4)—**

**(a)two people are in a qualifying relationship with one another if they are—**

**(i)married to each other,**

**(ii)in a civil partnership with each other, or**

**(iii)living together as though they were married,**

**(b)“a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,**

**(c)a relationship of the half blood is to be regarded as a relationship of the whole blood,**

**(d)a person's stepchild is to be regarded as the person's child,**

**(e)a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.**

**(6)In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.**

**(7)Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.**

7. As can be seen from Ground 5 of Schedule 3 of the 2016 Act, the persons who are considered to be a member of the family of the Landlord are qualified in terms of paragraphs 4 and 5(b) of the Ground. To enable an order for eviction to be granted in terms of that Ground the relative who intends to occupy the property must be “a qualifying relative” and a qualifying relative is designed as being “a parent, grandparent, child, grandchild, brother or sister”;
8. The persons who are to intend to occupy the property are not qualifying relatives. In those circumstances, as a matter of law the Tribunal cannot grant the order sought on the basis upon which the application is now presented;
9. In the circumstances, the Application is considered to be frivolous. Frivolous, in the context of legal proceedings, is defined by Lord Justice Bingham as follows:-

***“what the expression means in this context is, in my view, that the Court considers the Application to be futile, misconceived, hopeless or academic”*** (R v North West Suffolk (Mildenhall) Magistrate Court (1998) Env.LR.9 @ page 16)

10. In the context of this case, the Application would appear to be futile, misconceived and hopeless in that, for the reasons stated, the fundamental requirements set forth in Ground 5 of Schedule 3 of the 2016 Act are not met. In the circumstances, the Tribunal could not lawfully grant the order sought and, therefore, the application falls to be rejected.

## **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.**

Mr Virgil Crawford  
Legal Member  
17 March 2022