



**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

13 Millhall Court, Plains ("the property")

Case Reference: FTS/HPC/EV/22/1439

**William Taylor, Huntington, Cannop Crescent, Stoneyburn, West Lothian ("the
Applicant")**

Talent Kudya, 13 Millhall Court, Plains ("the Respondent")

1. On 16 May 2022, the Applicant submitted an application for an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). .
2. The Tribunal issued a request for further information and documents on 21 June 2021, in terms of Rule 5(3) of the Tribunal Procedure Rules 2017. The Applicant was directed to provide a copy of the tenancy agreement, Notice to Quit with evidence of service on the Respondent, amended application form which specified the grounds being relied upon and a copy of the section 11 notice sent to the Local Authority. The Applicant was also asked to comment of the validity of the AT6 notice as this did not specify the grounds of possession or the date upon which the Applicant became entitled to make the application. The Applicant was notified that a failure to respond may result in the application being rejected. The Applicant initially requested additional time to respond, which was granted. A reminder was issued by the Tribunal on 23 August 2022

and the Applicant provided a response and some documents on 12 September 2022. A further request was issued to the Applicant on 17 October 2022. The Applicant was directed to provide a copy of the signed tenancy agreement, a copy of the section 11 notice and an application form that specified relevant grounds for possession under the 1988 Act. The Applicant was again notified that the AT6 notice appeared to be invalid as this had not been addressed in the response. On 1 November 2022, the Applicant notified the Tribunal that he was seeking possession because the property had to be sold in order to pay mortgage arrears. He requested a period of time to take legal advice. This was granted and the Applicant was advised that a response should be provided by 10 January 2023. The Applicant was again advised that the application could be rejected. No further response has been received.

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 documents lodged 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 Procedural 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".
6. The Applicant has failed to lodge a copy of the Section 11 notice sent to the Local Authority. This is required in terms of Section 19A of the 1988 Act and Rule 65(5) of the Tribunal Procedure Rules 2017.
7. The AT6 Notice lodged with the application is invalid. It does not specify the grounds of possession. Furthermore, the Notice does not specify the earliest date that an application can be made to the Tribunal.
8. The application form lodged does not specify grounds for possession in terms of Schedule 5 of the 1988 Act. These are the only grounds upon which an order for possession can be granted.
9. The Applicant has failed to address the issues raised by the Tribunal and provide the information and documents requested in terms of Rule 5(3) of the Tribunal Procedure Rules
10. For the reasons outlined, the Legal Member is satisfied that the application is frivolous, misconceived and has no prospect of success. The application is

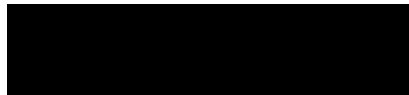
rejected on that basis.

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
1 February 2023