

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF VALERIE BREMNER, 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

3 Carment Drive, Stevenston, North Ayrshire, KA20 3LD

Case Reference: FTS/HPC/EV/19/2600

JOCELYN LEADBETTER ("the applicant")

SAMANTHA CHAPMAN ("the respondent")

1. On 19 August 2019 an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for a possession order in terms of Section 18(1) of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-
 - A tenancy agreement
 - A Form AT6
 - A Notice to Quit

DECISION

2. The application was considered 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."

3. On 10th September, 10th October and 8th November all 2019 the application was considered by a Legal Member of the Tribunal with delegated powers of the Chamber President. It was noted that the application was received by the Tribunal on 19 August 2019. The Tribunal has made a number of requests to the Applicant for sight of a Notice to the Local Authority in terms of the Homelessness etc (Scotland) Act 2003 and for proof of service of this Notice on the local authority. By e mails of 24th September and 15th October, both 2019 the Applicant confirmed that she had not submitted such a Notice as she was not aware of the requirement. No such Notice in terms of the 2003 Act with proof of service on the relevant local authority has ever been received by the Tribunal in relation to this Application.
4. After consideration of the Application and 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 Legal Member also considered section 19A of the Housing (Scotland) Act 1988 upon which this Application is founded which states -:

19A Requirement to notify local authority of proceedings for possession

(1)Where a landlord raises proceedings for possession of a house let on an assured tenancy, the landlord shall give notice of the raising of the proceedings to the local authority in whose area the house is situated, unless the landlord is that local authority.

(2)Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

7. The terms of section 19A of the Housing (Scotland) Act 1988 **require** that the Landlord gives Notice to the local authority when a possession order is being requested unless the local authority is the landlord. No such Notice has been given in the matter of this Application despite repeated requests by the Tribunal for this Notice and proof of service of it and it is therefore considered that the application cannot succeed.

8. Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous and has no prospect of success.

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.

Valerie Bremner
Legal Member
8 November 2019
