



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

50 Westend Drive, Bellshill, ML4 3AS ("the property")

Case Reference: FTS/HPC/PR/20/0943

Jessica Walker, 50 Westend Drive, Bellshill, ML4 3AS ("the Applicant")

**David Gemmel, Nancy Gemmell 41 Kennilworth Crescent, Bellshill, ML4 3EQ
("the Respondents")**

1. By application received on 16 March 2020 the Applicant seeks an order for damages for unlawful eviction in terms of Rule 69 of the Rules and Section 36(3) Housing (Scotland) Act 1988. Copy text messages and a written decision with statement of reasons by the Tribunal, rejecting an application for an eviction order, were lodged in support of the application. In the application the Applicant states that her address is the same as the address of the property to which the application relates. In the form the Applicant states that she is seeking "Payment of order for attempt of unlawful eviction and for stress, anxiety and harassment".
2. On 12 June 2020 the Tribunal issued a request for further information. The Applicant was asked to confirm the basis upon which the application could proceed as it appeared that the Applicant is still in occupation of the property. On 14 June 2020 the Applicant responded stating that the Respondent had

“attempted to get me out the house and I have always advised him to go through proper channels. He has since sent me another notice to quit...” On 26 June 2020 a further email was received from the Applicant which stated, in response to the question about her occupation of the property, that “this is in the process of being emptied and clean in the coming weeks. “. She also made further reference to attempts by the Respondent to evict her.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules. That Rule provides:-

“(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “

4. After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5.

Reasons for Decision

5. The Applicant submitted an application for damages for unlawful eviction in terms of Rule 69. This Rule states, “Where a former residential occupier makes an application under Section 36(3) (damages for unlawful eviction) of the 1988 Act the application must (a) state - (i) the name and address of the former residential occupier...(iv) the details of the amount of damages sought based on section 37 of the 1988 Act in respect of the loss of the right to occupy the premises ..”.

6. In terms of the application form submitted and the Applicant’s response to a request for further information, the Applicant has confirmed that she remains in occupation of the property. As a result, she is not a “former residential occupier” in terms of Rule 69 and Section 36(3) of the 1988 Act. The Legal Member also notes that the Applicant has failed to specify the amount of damages sought in terms of Rule 69(a)(iv). As the Applicant has failed to comply with the provisions of Rule 69, by providing the name and address of the “former residential occupier” and the details of the amount of damages sought, the application cannot be accepted. 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 July 2020