



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

8 Calder Tower, East Kilbride G74 2HJ ("the property")

Case Reference: FTS/HPC/CV/23/1874

Dimitry Silkin, Apartment 74, 8215 STR, Moldova MD 2005 ("the Applicant")

**Angel Homes Scotland Ltd, 1-3 Main Street, East Kilbride G74 4JH ("Applicant's
Representative")**

Kallum Atkins and Natasha Stout, ("the Respondent")

1. The Applicant seeks an order for payment of £1170 in respect of rent arrears in terms of Rule 111 of the Rules and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). A copy of a rent statement was lodged in support of the application.
2. The Tribunal issued a request for further information on 29 July 2023 to the Applicant's Representative, directing the Applicant to provide an address for the Respondent who had removed from the Property. The Applicant's Representative responded on 11 August 2023 advising they did not have a forwarding address for the Respondent. The Tribunal issued a further email to the Applicant's Representative on 29 August 2023 explaining that in order for the application to proceed the Applicant would require to seek to trace the Respondent and if that was unsuccessful the Applicant could make an application for service by advertisement. A response was sought by 12 September 2023. The Applicant's Representative did not respond. On 31 October 2023 the Tribunal issued a further email to the Applicant's

Representative providing a further opportunity for the required information to be provided. The Applicant's Representative did not respond.

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

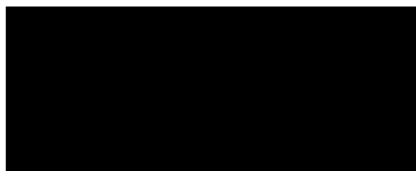
5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". 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 seeks an order for payment. In terms of Rule 111 of the Rules the application requires to state the address of the Respondent. The address provided was the address of the Property from which the Respondent had removed. No alternative address was provide and no application was made for service by advertisement. In these circumstances, the Legal Member 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.



Joan Devine
Legal Member
5 December 2023