



DECISION AND STATEMENT OF REASONS OF FIONA WATSON, 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

52 Niddrie Marischal Green, Edinburgh, EH16 4EW ("the Property")

Case Reference: FTS/HPC/EV/23/3386

Peter Turner, 6 Laurel Terrace, Edinburgh, EH11 1NY ("the Applicant")

Wendy Turner, 52 Niddrie Marischal Green, Edinburgh, EH16 4EW ("the Respondent")

1. The applicant submitted an application seeking a repossession order under Section 18 of the Housing (Scotland) Act 1988 and in terms of Rule 65 of the Rules.
2. The Applicant submitted the following documents with the application:
 - (i) Tenancy Agreement
 - (ii) Form AT6
 - (iii) Notice to Quit
 - (iv) Rent Statement
3. The applicant was written to on 10 October 2023 requesting further information to be provided, including (i) clarification on the ground of repossession being relied upon as the application was silent on this, (ii) comment on the validity of the AT6 which did not include the relevant ground of repossession, (iii)

comment on the validity of the Notice to Quit which did not specify a relevant date, (iv) evidence of service of the notices on the tenant, (v) evidence that a section 11 notification had been served on the Local Authority and (vi) clarification on the content of the rent statement provided which differed to the rent as stated in the tenancy agreement. The Applicant did not provide the information requested, but instead replied on 25 October 2023 by email seeking guidance on certain matters. By email of 31 October 2023, the Applicant was advised that the Tribunal could not provide him with legal advice. The Applicant was again written to on 20 November 2023 advising that he should take his own legal advice and that the information requested must be provided within two weeks. The Applicant confirmed that he had obtained a representative, however despite this, the requested information was not provided.

DECISION

4. 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.

5. After consideration of the application and the 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

6. '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.
7. Letters were sent to the applicant on 10 October 2023 and 20 November 2023 seeking further information. This information was not provided. The notices appear to be incompetent and do not appear to have been validly served, and there is no evidence of a section 11 notice having been served on the Local Authority.
8. The Legal Member therefore 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.



Legal Member
29 December 2023