



**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

2/3 Block B, 350 Argyle Street, Glasgow G2 8ND ("the Property")

Case Reference: FTS/HPC/TE/23/4676

Win, Eng Ewe, 0/1, 10 Charlotte Street, Glasgow G1 5DP ("the Applicant")

**Shu Guo, 23e Tower 1, The Avenue, No 200 Queens Road East, Wanchai, Hong
Kong ("the Respondent")**

1. By Application dated 23 December 2023 the Applicant sought an order under section 16(1) of the Private Housing (Tenancies) (Scotland) Act 2016 under rule 107 of the Rules. The applicant lodged two further applications, one under rule 107 in the same terms and one under rule 105.
2. By email dated 28 December 2023 the Applicant told the Tribunal that they would vacate the Property on 11 January 2024. By email dated 29 January 2024 the Tribunal sought clarification of the position and noted that applications under section 16(1) of the 2016 Act and rule 107 can only be made by the current tenant. The Applicant responded to the Tribunal by email dated 18 February 2024 in which the Applicant confirmed that the tenancy had ended.

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 Application can only be made by the current tenant under the tenancy. The

Applicant confirmed that the tenancy ended on 11 January 2024. 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
13 March 2024