



**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**

**Waterside Cottage, Eddlestone EH45 8QP ("the Property")**

**Case Reference: FTS/HPC/EV/23/3938**

**Accommodate Rural, 18 Northgate, Peebles, EH45 8RS ("the Applicant's  
Representative")**

**Alisdair Oliver, Waterside Cottage, Eddlestone EH45 8QP ("the Respondent")**

1. By Application dated 25 October 2023 the Applicant's Representative sought an order for possession under rule 109 of the Rules along with a statement of rent arrears and no other supporting documentation.
2. The Tribunal sought further information on 8 November 2023. The further information sought was : the name of the Applicant, a copy of the tenancy agreement, a copy of the notice to leave, evidence of service of the notice to leave; a copy of the section 11 notice sent to the local authority; evidence of compliance with the pre-action requirements and clarification of the ground on which an order for possession was sought. No response was received. The Tribunal followed up the request for further information on 15 December 2023 and 1 February 2024. No response was received.

**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.

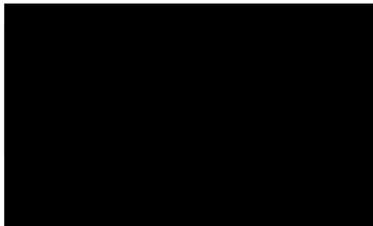
6. The Application was not accompanied by the essential documents required to support the application despite several requests for these to be produced. In these circumstances, the Legal Member determines that the Application is frivolous, misconceived and has no prospect of success. The Application 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.



Legal Member  
13 March 2024