

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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 FerryGait Place, EDINBURGH, EH4 4GN ("the Property")

Case Reference: FTS/HPC/EV/24/0014

Mrs Diane Aitken, Mr Kevin Aitken, 80 Silverknowes, Eastway, Edinburgh, EH4 5NE ("the Applicant")

Ms Susan De Vries, 2/3 FerryGait Place, EDINBURGH, EH4 4GN "the Respondent")

1. The Applicant submitted an application dated 27 December 2023 in terms of Rule 65 of the Rules. In support of the application, the Applicant submitted a copy of an assured tenancy agreement, rent statement, notice to leave and form AT6.

DECISION

2. 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.

- 3. 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

4. '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.
5. The Tribunal sent an email to the Applicant on 6 March 2024. In that email, the Tribunal requested comments on the validity of the AT6 because it was dated 7 December 2023 and was signed for on 11 December 2023. The Tribunal advised that less than 14 days' notice had been provided. The Applicant responded by email on 6 March 2024 advising that they proceeded on the basis that "the courts would not consider starting any proceedings until after 14 days after our tenant had signed for the paperwork".
6. In terms of section 19 (3) of the Housing (Scotland) Act 1988, a notice of

proceedings (form AT6) must be served informing the tenant that the landlord intends to raise proceedings for possession of the house on one or more grounds specified in the notice and informing the tenant that proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate) from the date of service of the notice.

7. It is clear from the notice served that the Applicant did not provide the requisite notice period in the notice. The notice produced by the Applicant is therefore invalid and cannot support the application. 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.

Nicola Irvine
Legal Member
28 March 2024