



**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**

**84 Drumpellier Avenue, Glasgow G69 7DP ("the Property")**

**Case Reference: FTS/HPC/EV/23/4613**

**Kingsmith Property Investment Ltd, 65 Clarence Street, Clydebank G81 2EB  
("the Applicant")**

**Sarah Louise Nicholas, 84 Drumpellier Avenue, Glasgow G69 7DP ("the  
Respondent")**

1. By Application dated 12 December 2023 the Applicant sought an order for eviction under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 under rule 109 of the Rules.
2. By email dated 11 March 2024 the Tribunal sought further information. The Tribunal sought clarification of a number of matters. The Respondent was Sarah Louise Nicholas only. The documents produced included a private residential tenancy agreement which commenced on 28 June 2019 and in which the tenant was stated to be Derek Bruce. A notice to quit dated 25 July 2023 was lodged. It was addressed to Sarah Louise Nicholas and Derek Bruce. A notice to leave dated 25 July 2023 was also lodged. It was addressed to Sarah Louise Nicholson and Madison Nicholas. The section 11 notice lodged referred to a tenancy which commenced on 2 July 2021 and stated that the tenant was Sarah Louise Nicholas. The rent statement lodged showed payments made by Sarah Louise Nicholas and Derek Bruce. The Tribunal

noted that inadequate notice may have been given in the notice to leave.

3. On 24 April 2024 the Tribunal emailed the Applicant following up the information requested on 11 March 2024. A reply was sought within 14 days. No response was received.

## **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 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

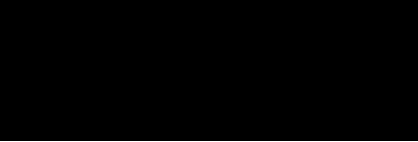
6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application 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. The only tenancy agreement lodged with the application stated that the tenant was Derek Bruce. The only notice lodged addressed to Derek Bruce was a notice to quit. A private residential tenancy cannot be terminated by a notice to quit. The notice to leave which had been lodged was addressed to Sarah Louise Nicholas and Madison Nicholas but no tenancy agreement was provided in which they were named as tenant and the application was brought only against Sarah Louise Nicholas as respondent. It was unclear to the Tribunal who was the tenant of the Property and the basis on which they occupy the Property. In the absence of this being clarified the Tribunal could not determine whether the correct process had been followed and correct notices had been served to terminate the tenancy. 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  
29 May 2024