



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

1 Dubh MacDonlad Road, Inverlochy, Fort William PH33 6JA ("the Property")

Case Reference: FTS/HPC/EV/24/1469

Stuart Campbell, 3 Prestonfiled Court, Saline, Fife KY12 9UU ("the Applicant")

Carl McGinty, 1 Dubh MacDonlad Road, Inverlochy, Fort William PH33 6JA ("the Respondent")

1. By Application dated 28 March 2024 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. The Application relied upon a notice to leave dated 17 May 2023 which stated that the period of notice expired on 12 August 2023. No section 11 notice was lodged. By email dated 7 May 2024 the Tribunal asked the Applicant to provide a copy of the section 11 notice and drew the Applicant's attention to section 55 of the Private Housing (Tenancies)(Scotland) Act 2016. The Applicant responded by email dated 10 May 2024 in which he stated that he was unaware of the need to send a section 11 notice to the local authority and he had delayed applying to the Tribunal on expiry of the notice period in the notice to leave in light of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.

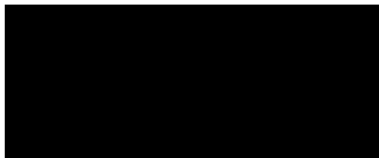
6. The notice to leave lodged with the Application is dated 17 May 2023. The expiry of the notice period specified at part 4 of the notice to leave is 12 August 2023. In terms of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 a landlord may not make an application to the Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired. The six month period in the case of this notice to leave expired on 12 February 2024. The Application was lodged on 30 March 2024 and was therefore made outwith the 6 month period. 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