

**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

**13E Glenhove Road, Glasgow G67 2LG ("the Property")**

**Case Reference: FTS/HPC/EV/24/2215**

**Mrs Moira Rankin, 2 Glenview, Kirkintilloch, G66 1PG , ("the Applicant")**

**Mr Krystian Krzysztof, Miss Karolina Siewierska, 13E Glenhove Road, Glasgow G67 2LG ("the Respondent")**

1. The Applicant submitted an application in terms of Rule 109 of the Rules dated 15 May 2024. In support of the application, the Applicant lodged the tenancy agreement, Notice to Leave ("NTL") along with evidence of service, a section 11 notice, along with evidence of service and an affidavit of the Applicant.

**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. On 30 May 2024, the Tribunal issued an email to the Applicant's representative, observing that the NTL expired on 25 August 2023 and advising that a landlord may not make an application for eviction using a NTL more than six months after the expiry of the notice. The Tribunal enquired whether a further NTL was served and requesting a copy of same, otherwise the application would be rejected. The Applicant's representative was advised that a response was required by 13 June 2024, otherwise the application may be rejected. No response was received by the Tribunal.

6. The relevant section of the Private Housing (Tenancies) (Scotland) Act 2016 considered by the Legal Member are:-

Section 55 provides

(1) A landlord may not make an application to the First-tier 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.

(2) In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

7. In this case, the period of notice expired on 25 August 2023. The six month period expired on 25 February 2024. The application was made on 15 May 2024. The Legal Member concluded that the application has no prospects of success.

### **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  
7 July 2024