



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

22 Ratho Drive, Glasgow, G21 1NA ("the Property")

Case Reference: FTS/HPC/EV/24/1332

Mr Kenny Febers, Mrs Ann Febers, 99 Forrest Street, South Perth, 6151, Western Australia ("the Applicant")

Mrs Linda Khadraoui, Mr Mohamed Amine Khadraoui, 22 Ratho Drive, Glasgow, G21 1NA ("the Respondent")

1. The Applicant submitted an application dated 19 March 2024 in terms of Rule 109 of the Rules. In support of the application, the Applicant lodged a copy notice to leave, certificate of postage, proof of delivery and a copy section 11 notice.

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 19 April 2024, the Tribunal sent an email to the Applicant requesting further information. The Applicant was advised that a response was required by 3 May 2024 otherwise the application may be rejected. No response was received.
6. On 13 June 2024, the Tribunal sent a further email to the Applicant requesting a response to the email of 19 April 2024. The Applicant was advised that a response was required by 27 June 2024 otherwise the application may be rejected. No response was received.
7. The Applicant has been given opportunities to provide further information and has failed to do so.
8. In addition, the Legal Member considered Section 55 of the 2016 Act which 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).
9. In this case, the period of notice expired on 23 July 2023. The six month period expired on 23 January 2024. The application was made on 19 March 2024. The Legal Member concluded that the application has no prospects of success and 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.

N.Irvine

19 July 2024