



**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

35 Loch Shin, East Kilbride, Glasgow G74 2DH ("the Property")

Case Reference: FTS/HPC/PR/24/0414

**Christine Maclachlan, 70 Plover Drive, East Kilbride, Glasgow G75 8UU ("the
Applicant")**

**Anne Marie Gilmour, 53 Rockhampton Avenue, East Kilbride, Glasgow G75 8EH
("the Respondent")**

1. By Application dated 22 January 2024 the Applicant sought an order for payment of compensation under section 57 or 58 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act") under rule 110 of the Rules.
2. By email dated 26 February 2024 the Tribunal noted that the application had been made under the 2016 Act but that the tenancy agreement lodged was a short assured tenancy under the Housing (Scotland) Act 1988 ("1988 Act") which commenced on 28 February 2017. The Tribunal asked the Applicant to specify the basis of her claim for damages under the 1988 Act. The Tribunal followed up the request for further information on 23 April and 7 June 2024. No response was received.

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 Applicant failed to specify the basis of her claim for damages under the 1988 Act which is the legislation relevant to her tenancy. The application was brought under the 2016 Act which is not relevant to her 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
31 July 2024