

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

2 Market Street, Castle Douglas, DG7 1BE ("the Property")

Case Reference: FTS/HPC/EV/24/1543

Ms Kirsty Barbour, 50 Rotchell Park, Dumfries, DG2 7RJ , ("the Applicant")

Ms Audrey Robertson, 2 Market Street, Castle Douglas, DG7 1BE ("the Respondent")

1. The Applicant submitted an application in terms of Rule 109 of the Rules dated 3 April 2024. In support of the application, the Applicant lodged the tenancy agreement, Notice to Leave ("NTL"), a section 11 notice, along with evidence of service and evidence of the Applicant's intention to sell the Property.

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 20 June 2024, the Tribunal issued an email to the Applicant's representative indicating that the NTL appeared to be invalid. The Applicant's representative responded by email on 24 June 2024, advising that the Government website had been used to assist in the calculation of days required for the notice. Although the Applicant's representative could not locate the post office receipt, a track and trace result was produced showing that the Respondent received the NTL on 8 January 2024.
6. The relevant sections of the Private Housing (Tenancies) (Scotland) Act 2016

considered by the Legal Member are:-

Section 52 (2) provides

The Tribunal is not to entertain an application for an eviction order if it is made in breach of (a) subsection (3), or (b) any of sections 54 to 56.

Section 54 (2) provides

The relevant period in relation to a notice to leave – (a) begins on the day the tenant receives the notice to leave from the landlord, and (b) expires on the day falling – (i) 28 days after it begins if subsection (3) applies; (ii) 84 days after it begins if subsection (3) does not apply.

Section 62(4) provides

The day to be specified in accordance with subsection 1(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

7. In this case, the required period of notice was 84 days, because the Applicant relied upon ground 1 and the tenancy had subsisted for more than 6 months. The Applicant's representative was unable to produce the post office receipt to show when the NTL was served. The NTL was signed for by the Respondent on 8 January 2024. The date entered at part 4 of the NTL was 1 April 2024, which was 84 days after the NTL was received by the Respondent. When one takes account of section 62(4), the date that should have been entered in part 4 of the NTL was 2 April 2024. The NTL served was therefore invalid. 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.

N. Irvine

Nicola Irvine
Legal Member
18 July 2024