



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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

43 Mcree Court, Alloa, FK10 1QE ("the Property")

Case Reference: FTS/HPC/EV/24/3327

Not completed in Application ("the Applicant")

Andrew Stark ("the Respondent")

1. On 23rd July 2024 The Applicant's Agent seeks an eviction order in terms of Rule 65 of the Rules and the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant was not named in the Application as the section for "Applicant" was not completed. The Agent, Milton Zata lodged the application, and in part 5 wrote:

"Ground 10. Tenant has been given notice to quit which has expired and he's still not left the property, also has damaged the property and we want to sell the property and rent arrears of over a year."

The Agent did not lodge any relevant documents.

2. On 23rd July 2024 the Tribunal's administration wrote to the Agent requesting, amongst other documents, a copy of the tenancy agreement, copies of the AT6

and Notice to Quit, proof of service of the AT6 and Notice to Quit and evidence that the ground of eviction had been met.

3. On 29th July 2024 the Agent replied by email advising, among other things, that there was no written tenancy agreement but that the tenant had been in the property since 2019, and querying what was meant by evidence that the ground of eviction had been met. He said that he would upload the Notice to Quit and AT6, but did not do so. He said that he did not know what was required regarding proof of service of the notices.

DECISION

4. 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.

5. 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

6. '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.
7. The Application is made under Rule 65, which is in relation to tenancies which fall within the Housing (Scotland) Act 1988. The Agent states that the Respondent has occupied the property since 2019. The tenancy therefore does not fall within the 1988 Act, but within Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Agent has not followed the correct procedure under the 2016 Act as he has not served a Notice to Leave (nor under the 1988 Act although that is not relevant, but worth noting) The Legal Member therefore 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.

Alison Kelly
Legal Member
26th August 2024