



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

Flat 2/1, 56 Kerrycroy Avenue, Glasgow G42 OBQ ("the Property")

Case Reference: FTS/HPC/EV/24/3025

Z&E Lettings, 15 Ardnahoe Place, Glasgow G42 ODQ ("the Applicant")

Wojciech Wlaziak, Flat 2/1, 56 Kerrycroy Avenue, Glasgow G42 OBQ ("the Respondent")

1. By Application dated 2 July 2024 the Applicant sought an order for eviction under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act") under rule 109 of the Rules. The Application relied upon a notice to leave dated 31 May 2024.
2. By letter dated 2 August 2024 the Tribunal asked the Applicant to provide the following further information: evidence of service of the notice to leave; clarification of the ground for eviction relied upon; a copy of the section 11 notice and evidence of it having been given to the local authority; and evidence showing that the ground for eviction had been met. A response was requested by 16 August 2024. No response was received. The information was requested again on 17 September 2024. A response was requested by 1 October 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. In terms of section 52(2) of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless the application is accompanied by a notice to leave that has been given to the tenant. When lodging a copy of the notice to leave the Applicant stated that it had been handed to a representative of the Respondent. No evidence was provided that the notice to leave was given to the Respondent or that the Respondent had authorized a third party to accept service on his behalf. In terms of section 56 of the 2016 Act, a landlord may not apply for an eviction order unless the landlord has given notice to the local authority of their intention to do so. No evidence was provided with the application of such notice having been given. In addition the notice to leave referred to ground 11 as being the ground for eviction while the application form referred to ground 13 and “case 6”. Clarification of the ground for eviction was sought but not provided. In all the 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.

J Devine

Joan Devine
Legal Member
29 October 2024