



**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

15 Canal Street, Saltcoats KA21 5HY ("the Property")

Case Reference: FTS/HPC/EV/24/0226

**Michael Cassidy and Karen Cassidy, 39 Irvine Road, Kilmarnock KA1 2JN ("the
Applicant")**

**Gail Queen and Sarah Queen, 15 Canal Street, Saltcoats KA21 5HY ("the
Respondent")**

1. By Application dated 11 January 2023 (received on 15 January 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 11 September 2023 addressed to Gail Queen and Sarah Queen. The ground for eviction in the notice to leave was ground 1. The Applicant provided a copy email to Sarah Queen dated 27 September 2023 attaching the notice to leave. In the application the Applicant stated that they relied on grounds 10 and 11 for eviction.
2. By email dated 23 February 2024 the Tribunal asked the Applicant to provide the following further information: a copy of the tenancy agreement; evidence of service of the notice to leave on Gail Queen and clarification of the ground for eviction relied upon. The information was not provided and was requested again on 22 March 2024. The Applicant responded on 28 March 2024 stating that they had been unable to locate a copy of the tenancy agreement; again providing a copy of the email dated 27 September 2023 sending the notice to

leave to Sarah Queen and stating that the ground for eviction relied upon was ground 1.

3. By email dated 29 April 2024 the Tribunal asked the Applicant to provide what information they could about the tenancy agreement including whether both Gail Queen and Sarah Queen were named as tenants, the commencement date and the contact details provided for Gail Queen. The Tribunal also requested evidence of service of the notice to leave on Gail Queen, a copy of the section 11 notice sent to the local authority and clarification of the ground for eviction relied upon. No response was received. By emails dated 6 June and 25 July 2024 the Tribunal again sought the outstanding information. On 7 August 2024 the Applicant sent an email to the Tribunal in which they stated that they had instructed a solicitor and awaited hearing from them. By email dated 5 September 2024 Tribunal again sought the outstanding information from either the Applicant or their solicitor and noted that if a substantive response was not received by 19 September 2024 the application was likely to be rejected. No response was received.

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 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

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. 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. The application indicated that there were two Respondents. Evidence of the notice to leave being sent to the Respondent was only provided in respect of one Respondent. Although the notice to leave was dated 11 September 2023 the copy email sending it to Sarah Queen was dated 27 September 2023 which indicated that insufficient notice was given to Sarah Queen. As no copy tenancy agreement was provided the Tribunal could not determine whether the Respondents had consented to service by email as is required for service by email to be valid. 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. Whilst the information provided indicated that the Applicant had been in touch with the local authority, no copy section 11 notice was 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.

Joan Devine
Legal Member
29 October 2024