



DECISION AND STATEMENT OF REASONS OF FIONA WATSON, 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

4 Henderston Cottages, Newtyle, Angus, PH12 8UT ("the Property")

Case Reference: FTS/HPC/CV/24/2641

Gregory Dedman, 4 Henderston Cottages, Newtyle, Angus, PH12 8UT ("the Applicant")

Andrew McCall, Angus McCall, Henderston Farm, Newtyle, Angus, PH12 8UT ("the Respondent")

1. The Applicant seeks a payment order in terms of Rule 111 of the Rules. The Applicant lodged the following documents:
 - (i) An unsigned and undated application form
 - (ii) Copy email exchanges between the parties
 - (iii) Copy text message exchanges between the parties
 - (iv) Photographs of the Property
 - (v) Copy rent increase notice
 - (vi) Report from Atholls, Chartered Surveyors dated 27 March 2024
 - (vii) Copy Tenancy Agreement

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. Emails were sent to the applicant on 8 July 2024 and 22 August 2024 seeking further information from the Applicant and stated as follows:

- (i) *"The application is unsigned and undated. Please amend the application to include your full name and the date on page 7.*
- (ii) *Please clarify if the second tenant is to be a party to the application. If so please amend the application to give her name and address. If matters are to proceed in your sole name please provide a signed letter from her to confirm this is in accordance with her wishes.*
- (iii) *Please provide details of what the photographs provided are intended to show. Please provide a numerical list and a commentary for each one. For example 1. Photo of x showing y.*
- (iv) *You are claiming £5000. Please provide details of how this sum is arrived at with reference to any outlays. If outlays form part of this sum please provide evidence of the losses claimed in the form of receipted invoices.*
- (v) *Please provide a time line of key dates in connection with your claim."*

6. This information was not provided. The application is therefore entirely lacking in specification and does not provide fair notice to the respondent as to the claim against them.

7. 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.

Fiona Watson
Legal Member
25 October 2024