



**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

0/1, 21 McLennan Street, Glasgow G42 9DH ("the Property")

Case Reference: FTS/HPC/EV/24/3572

**Cameron O'Keefe, 25 Takahe Drive, Cashmere, Christchurch 8022, South Island,
New Zealand ("the Applicant")**

**Angela O'Keefe, 22 Stakehill, Largs, north Ayrshire KA30 9NH ("the Applicant's
Representative")**

**Dawn Moffat and William Connelly, 0/1, 21 McLennan Street, Glasgow G42 9DH
("the Respondent")**

1. By Application dated 2 August 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 an email to the Respondent dated 3 September 2023 as being the notice to leave. The email did not comply with the requirements of section 62 of the Private Housing (Tenancies)(Scotland) Act 2016 ("2016 Act") in that it did not specify the day on which the landlord under the tenancy expected to become entitled to make an application for an eviction order and it did not state the ground for eviction. In addition the period of notice given did not comply with the periods of notice set out in section 54 of the 2016 Act.
2. By emails dated 6 August and 3 September 2024 the Tribunal asked the Applicant to provide a copy of a notice to leave that had been issued and which complied with the requirements of the 2016 Act. By email dated 16 September

2024 the Applicant's Representative told the Tribunal that a notice to leave conform to the 2016 Act requirements had not been served. By email dated 23 October 2024 the Tribunal told the Applicant's Representative that the Tribunal could not entertain an application for an eviction order which was not accompanied by a notice to leave in the required format. The Tribunal suggested that the application be withdrawn. The Tribunal requested a response by 6 November 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.

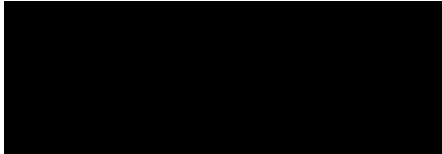
6. In terms of section 52(2) of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless the application is accompanied by a notice to leave that has been given to the tenant. Section 62 of the 2016 Act sets out the meaning of "notice to leave." The email relied upon by the Applicant as being a notice to leave did not comply with the requirements of section 62 of the 2016 Act. 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
5 December 2024