



DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

27A Priesthill Road, Glasgow, G53 6QH ("the Property")

Case Reference: FTS/HPC/EV/24/3582

Mr Scott MacColl, 2 Slessor Street, Waddington, Lincoln, LN5 9NE ("the Applicant")

Stephanie Barbour, 27A Priesthill Road, Glasgow, G53 6QH ("the Respondent")

1. The Applicant submitted an application for an eviction order in terms of Rule 66 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). In support of the application, the Applicant lodged a copy of the tenancy agreement, form AT5, form AT6, Notice to Quit, Notice in terms of section 33 of the Housing (Scotland) Act 1988, Notice to Leave under section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), and section 11 notice served on the local authority.

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. On 5 September 2024, the Tribunal sent an email to the Applicant advising that the Notice to Quit specified a date which was not an ish date and was therefore invalid. The Tribunal also advised that the form AT6 specified grounds of eviction which do not apply in terms of the Housing (Scotland) Act 1988. The Tribunal suggested that the application be withdrawn and resubmitted with a valid Notice to Quit.
6. The Applicant responded by email on the same day, but his response did not address the issue of the invalid Notice to Quit.
7. The Tribunal sent a further email to the Applicant on 10 October 2024 advising that the response of 5 September 2024 did not deal with the issue of validity of the Notice to Quit. The Tribunal advised that the Notice to Leave is only relevant to private residential tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal suggested that the Applicant may wish to take advice and requested confirmation that the present application was to be withdrawn to allow valid notices to be served. The Tribunal requested a response by 24 October 2024, otherwise the application may be rejected. The Tribunal did not receive a response from the Applicant.
8. The Application is not supported by a valid Notice to Quit, nor a valid Notice of Proceedings as required by section 19 of the 1988 Act. In these 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.

N.Irvine

Legal Member
22 November 2024