

**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

**Case reference FTS/HPC/RA/25/1105**

**Parties**

**David C Alaman, Paloma Rodriguez (Applicants)**

**Joanne Macphail, Brian Macphail (Respondents)**

**Flat 22U, 20 Melvaig Place, Glasgow, G20 8EZ (House)**

1. The Applicants made a referral to the Tribunal in terms of Rule 61 of the Rules which was received on 12 March 2025.

**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. This is a reference to the Tribunal in respect of the property Flat 22U, 20 Melvaig Place, Glasgow, G20 8EZ.

6. The tenancy is a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). It commenced on 24 May 2020.
7. On 19 February 2025 the Respondents served a notice on the Applicants indicating that they proposed to charge a new rent of £1,100.00 per month with effect from 21 March 2025. The notice was in form AT2 which relates to assured tenancies.
8. The Applicants sent a notice to the Respondents on 10 March 2025, acknowledging receipt of the form AT2 and providing notice that the Applicants do not accept the new rent to apply from 21 March 2025. In that notice, the Applicants set out, amongst other things, that they do not have a tenancy under the Housing (Scotland) 1988 Act (“the 1988 Act”).
9. The Applicants objected to the proposed increase by referring the proposed increase to the Tribunal by lodging Form AT4 dated 11 March 2025.
10. The matter was referred to a legal member of the Tribunal with delegated powers of the Chamber President.

### **Reasons for Decision**

11. The tenancy is a private residential tenancy under the 2016 Act.
12. Rent increases for private residential tenancies are governed by section 22(1) of the 2016 Act which requires the landlord to serve a notice of intention to increase rent in the prescribed form.
13. The notice of intention to increase rent was served by reference to the 1988 Act, using the form prescribed by that Act in relation to assured tenancies and incorrectly advised the Applicants that they could refer the matter to the Tribunal by completing form AT4.
14. The notice of increased rent should have been served using the prescribed form under the 2016. The notice refers to the wrong statute and does not advise the tenant of her appeal rights. The notice is defective in form and so is invalid.
15. No valid notice of intention to increase rent has been served. There cannot, therefore, be an increase in rental.

## **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

Nicola Irvine  
Legal Member  
12 June 2025