

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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

13 Taylor Green, Livingston, EH54 8SY

Case Reference: FTS/HPC/EV/20/0201

Mr Sean Brogan ("the Applicant")

Ms Kathleen Brogan ("the Respondent")

1. By application dated 16th January 2020 the Applicant seeks an order under Rule 109 of the Procedural Rules, which is an application for eviction.
2. A request for further information was issued to the Applicant on 23 January 2020. A response was requested by 30th January 2020. No response was received. A further reminder was sent on 31st January 2020, and then a further reminder was sent on 18th February 2020, seeking a response by 3rd march 23020. No response has been received to any of those reminders.

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, the supporting documentation and correspondence from the Applicant, 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) Envoy 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 the absence of information requested and as the Applicant has failed to respond to requests for further information required by the Tribunal, the Legal member concludes 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.

Alison J Kelly
Legal Member
16th March 2020

