

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

94 Sylvan Way, Bathgate, West Lothian, EH48 2RH

Case Reference: FTS/HPC/CV/20/0376

Mrs Lorraine McKeating ("the Applicant")

George McKeating ("the Respondent")

1. By application dated 5th February 2020 the Applicant seeks an order under Rule 70 of the Rules of Procedure. Documents lodged in connection with the application are:
 - i) Copy letter dated 22nd August 2003 from W&J Reid, Solicitors addressed to the Respondent and his wife confirming that the property was bring purchased by the Applicant and her husband and that the Respondent and his wife would be given a liferent;
 - ii) Copy Agreement between the Applicant and the respondent and his wife dated 22nd August 2003;
 - iii) Copy decree from Livingston Sheriff Court dated 24th April 2019 ordering the Respondent to pay the Applicant the sums

of £9360 and £681.35;

- iv) Copy Certificate by Sheriff Clerk under section 18 of, and Paragraph 4(1) of Schedule 6 to, The Civil Jurisdiction and Judgements Act 1982 dated 6th June 2019;
 - v) Copy letter from the respondent dated 19th June (no year given) offering to give up the liferent if no further sums are sought from him;
 - vi) Invoice from the Applicant to the Respondent dated 1st October 2019 in the amount of £3012.60;
 - vii) Documentation regarding service of a charge for payment;
2. The Applicant has also provided a detailed statement regarding the circumstances of the case, outlining that the property was purchased from her parents to get them out of debt and that her parents were to pay a monthly sum.
3. The tribunal wrote to the Applicant on 18th February 2020 asking for confirmation as to why the Applicant thought there was a lease rather than a loan agreement/contract, why the case was brought to the tribunal rather than returning to the Court and asking for a copy of the Initial writ/pleadings in relation to the court action.
4. The applicant responded on 3rd March 2020 with a detailed statement, and providing the documentation requested.

DECISION

5. 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.”

6. 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)(c) of the Procedural Rules.

Reasons for Decision

7. The tribunal derives its jurisdiction from section 16 of the Housing (Scotland) Act 2014. It states as follows:

“16 Regulated and assured tenancies etc.

(1)The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a)a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b)a Part VII contract (within the meaning of section 63 of that Act),

(c)an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2)But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3)Part 1 of schedule 1 makes minor and consequential amendments.

9. The arrangement between the parties in this case does not fall within the definition of subsections 1(a), (b) or (c) and therefore I do not see how it could be argued that the First Tier Tribunal has jurisdiction to deal with the case. The title contains a liferent in favour of the Respondent and the Tribunal does not have power to remove, renounce or in any way overturn a liferent interest. It is therefore in terms of Rule 8(1)(c) not appropriate to accept the application, and it 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

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