



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedural Rules")**

in connection with

36 West Pilton Terrace, Edinburgh ("the property")

Case Reference: FTS/HPC/EV/22/0393

Muhammad Zeeshan, 87 Milton Road West, Edinburgh ("the Applicant")

**Jordan Stewart, Tara Lothian, 36 West Pilton Terrace, Edinburgh ("the
Respondents")**

1. The Applicant submitted an application for an eviction order in terms of Rule 109 of the Procedural Rules and Section 51 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). Part of a short assured tenancy agreement, a notice to quit and AT6 notice were lodged with the application.
2. The Tribunal issued a request for further information on 24 February 2022. In the letter, the Tribunal noted that the partial tenancy agreement which had been lodged indicated that the tenancy started on 1 September 2018. As a result, it could not be an assured tenancy in terms of the Housing (Scotland) Act 1988 ("the 1988 Act") as schedule 5 of the Private Housing Tenancies (Scotland) Act 2016 stipulates that no new assured tenancies could be created after 1 December 2017. The Applicant was asked to clarify the position and to provide a valid Notice to leave, as the notices lodged relate only to assured tenancies. Alternatively, if the tenancy agreement was an extension of an existing assured tenancy, the Applicant was asked to provide a copy of the whole agreement

and explain why the Tribunal could entertain the application as both the Notice to Quit and AT6 notice appeared to be invalid. In either case, the Applicant was also asked to provide a copy of the section 11 notice sent to the Local Authority. The Applicant was notified that a response was required by 11 March 2022 or the application may be rejected. The Applicant did not provide a response to the request or to a reminder sent on 31 March 2022.

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. The application lodged with the Tribunal seeks an eviction order in terms of Section 51 of the 2016 Act. The Applicant lodged part of a short assured tenancy agreement, which indicates that the tenancy started on 1 September 2018. Part 1 of Schedule 5 to the 2016 Act amends Section 12 of the 1988 Act by inserting the following provision - "(1)(a) A tenancy cannot be an assured tenancy if it is granted on or after the day that section 1 of the Private Housing Tenancies (Scotland) Act 2016 comes into force." The relevant date was 1 December 2017. It therefore appears that the tenancy is a private residential tenancy and the application has been made in terms of the correct rule and legislation.
7. The Applicant lodged a copy of a Notice to Quit and AT6 notice in support of the application. These Notices are required for applications under the 1988 Act and not required for applications under the 2016 Act. The Applicant has failed to respond to two requests for a copy of the Notice to leave which has been served on the Respondent. He also failed to lodge a section 11 notice with the application or in response to a request from the Tribunal
8. Prior to making an application in terms of Section 51 of the 2016 Act and Rule 109 a landlord requires to issue a tenant with a Notice to Leave and provide the Tribunal with a copy of that notice (Section 52(3) of the 2016 Act). Section 62(1) of the 2016 Act stipulates that a notice to leave is a notice which is in writing, specifies the day on which the landlord expects to become entitled to make an application for an eviction order and states the eviction ground or grounds (from Schedule 3 of the 2016 Act) which are to be relied upon. The

notice to quit and AT6 notice lodged do not provide this information and therefore do not meet the requirements of a valid notice to leave in terms of the Act. Furthermore, Section 56 of the 2016 Act states that a landlord may not make an application for an eviction order unless he has given notice to the Local Authority of his intention to do so in terms of Section 11 Homelessness etc (Scotland) Act 2003. The Applicant has failed to provide the Tribunal with a copy of a valid section 11 notice which has been sent to the Local Authority.

9. As the Applicant has failed to provide evidence of compliance with the requirements of the 2016 Act, 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.

J Bonnar

Josephine Bonnar
Legal Member
3 May 2022