



**DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)**

**Chamber Ref:** FTS/HPC/EV/19/0815

**Re: Property at Garden House, Ayton Castle Estate, Ayton, Berwickshire, TD14 5RD (“the Property”)**

**Parties:**

Brian Parsons, Richard Syred (“the Applicants”)  
Maira Brown (“the Respondent”)

**Joel Conn (Legal Member)**

**BACKGROUND**

1. On 11 March 2019 an application was drafted for the Applicants by their solicitor (Thorntons, Solicitors, of Dundee) under Rule 65 of the Rules, being an application for an order for possession in relation to an assured tenancy under which the Applicants had leased to the Respondent the Property from 22 September 2006 for 10 years and “thereafter on a month, to month basis” (sic) all at a monthly rent of £540 per month, payable in advance on the 22<sup>nd</sup> of each month (“the Tenancy”).
2. The application materially relied upon a copy of a notice in terms of section 19 of the Housing (Scotland) Act 1988, known as an AT6.
3. At Part 2 of the AT6, the Applicants relied upon a single ground from Schedule 5 to the 1988 Act, being Ground 8. The statutory terms of that ground were repeated in the AT6 as follows:

“Ground 8: Both at the date of the service of the notice under section 19 of the Housing (Scotland) Act 1988 relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears”.
4. Thereafter Part 3, in which the Applicants were to provide the “following reasons” for reliance on Ground 8, the Applicants provided the same narration as in Part 2, merely narrating the terms of the ground without any specific detail as to the level of the arrears or the date they were incurred.

5. The general effect was that there was no information to the tenant as to what omitted rental payments was being relied upon in regard to Ground 8.
6. The application was considered by the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

### **DECISION**

7. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

*5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*

*(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*

*(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. ...*

*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;*

*...*

*(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.*

8. Rule 65, governing the application, further provides:

*Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—*

*(a) state—*

- (i) the name, address and registration number (if any) of the landlord;*
- (ii) the name, address and profession of any representative of the landlord;*
- (iii) the name and address of the tenant; and*
- (iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;*

*(b) be accompanied by—*

- (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;*
- (ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;*
- (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and*
- (iv) evidence as the applicant has that the possession ground or grounds has been met; ...*

*(c) be signed and dated by the landlord or a representative of the landlord.*

9. Section 19 of the 1988 Act (as amended) states:

*(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*

*(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or*

*(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.*

*(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.*

*(3) A notice under this section is one in the prescribed form informing the tenant that—*

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

10. After consideration of the application and attachments, 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 THE DECISION**

11. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court, [1997] EWCA Civ 1575*. He states: “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 this definition that I have considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
12. In consideration of all the papers, the AT6 notice did not satisfy the requirements of the 1988 Act in my view.
13. The Chamber President reviews the case law, authorities and guidance on completion of AT6s in her decision in application by *V & E Properties (Dumfries) Limited v Ian West* (reference EV/17/0454) of 22 December 2017. In that decision, she notes that for an AT6 to satisfy the requirements of section 19(3) of the 1988 Act, there requires to be both the required information in Part 2 and Part 3, and that information in Part 3 must be adequate so that, in regard to grounds relating to rent arrears, “the amount of the arrears should be stated or the notice should contain sufficient information to enable the tenant to calculate the amount that is due”. I adopt her reasoning. Clearly the AT6 notice contains no information on the arrears that the tenant is expected to pay so as to avoid the risk of repossession. The notice is entirely insufficient in regard to Ground 8 in terms of section 19(2) of the 1988 Act. In conclusion, this application lacks a valid AT6.
14. In the circumstances, I do not consider there to be any prospect of success of this application and an application based on the documentation provided is rejected on the basis that the application is frivolous.

## **RIGHT OF APPEAL**

### **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:-

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

**Joel Conn**  
**Legal Member/ Chair**

20 March 2019  
**Date**