



**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 Rules")**

in connection with

1/ 2 12 Whitefield Road, Glasgow ("the property")

Case Reference: FTS/HPC/EV/21/1071

Mohammad Murtaza, 6 West Vows Walk, Kirkcaldy ("the Applicant")

Howard Fitzpatrick, 1/ 2 12 Whitefield Road, Glasgow ("the Respondent")

1. By application received on 4 May 2021, the Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant seeks an order for possession of the property on ground 15 of the 1988 Act.
2. The Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide a copy of the tenancy agreement and copies of the Notice to Quit and AT6 Notices served on the Respondent. In response, the Applicant advised that the tenancy agreement could not be located and that no Notices had been served on the Respondent prior to the application being submitted. The Applicant was asked to explain the basis upon which the Tribunal could consider the application, in the absence of these documents. No response to this request was received.

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 Applicant seeks recovery of possession of an assured tenancy on the basis of ground 15 of Schedule 5 of the 1988 Act. The Applicant has not provided a copy of the tenancy, but has provided some information about it, including an approximate start date. The Applicant has stated that no notices were served on the Respondent. Section 19(1)(a) of the 1988 Act states that the Tribunal can dispense with the requirement to serve an AT6 Notice, where it considers it reasonable to do so. The Legal Member is therefore satisfied that the application could be accepted and considered by the Tribunal, notwithstanding the lack of a written tenancy agreement or AT6 Notice

7. The Legal Member proceeded to consider whether the application could be entertained in the absence of a valid Notice to Quit. Before an order for possession can be granted by the Tribunal, the tenancy contract between the parties must be terminated. The only exception to this is where section 18(6) of the 1988 Act applies. This states "The First tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b) **the terms of the tenancy make provision for it to be brought to an end on the ground in question.** (6A) Nothing in subsection (6) above affects the First-tier tribunal's powers to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is ground 15 in Part II of Schedule 5 to this Act ". As the Applicant has not provided a copy of the tenancy agreement, it is not possible to establish whether the agreement between the parties makes any provision for the tenancy to be terminated on ground 15. As a result, Section 18(6) does not apply and the Applicant cannot seek an order for possession without first terminating the tenancy contract. As the Applicant did not issue the Respondent with a Notice to Quit, the tenancy contract has not been terminated. The Legal Member determines 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.

Josephine Bonnar

Legal Member

13 July 2021