

Housing and Property Chamber  
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE, LEGAL MEMBER  
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER  
PRESIDENT

Under Rules 5, 8 & 70 of the First-tier Tribunal for Scotland Housing and Property Chamber  
Rules of Procedure 2017 ("the Procedural Rules")

In connection with

Case Reference: FTS/HPC/CV/19/1243

Mr. Adam Kindreich ("the Applicant")

Mr. Brian Kindreich ("the Respondent")

**Background**

1. On 24 April 2019, an application was submitted by the Applicant. The application is made under Rule 70 of the Procedural Rules. The application seeks payment of a sum of money as compensation from the tenant 'for his planned non-compliance with the Notice to Quit that has been served on him 1 May 2019. This means that beyond this date, he will be occupying my property unlawfully'. A further detailed explanation is attached to the Application. The Applicant relies on the terms of an e mail from the tenant in which he states he will only vacate the Property on 1 June 2019.
2. The matter then was considered by me today.

**Decision**

3. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

*"Requirements for making an application*

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.*

(4) *The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.”*

4. I considered the application in terms of Rule 8 of the 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.”*

5. I considered the application in terms of Rule 70 of the Procedural Rules. That Rule provides:

*'Application for civil proceedings in relation to an assured tenancy under the 1988 Act*

*70. Where a person makes any other application to the First-tier Tribunal by virtue of section 16 (First-tier Tribunal's jurisdiction in relation regulated and assured tenancies etc.) of the 2014 Act, the application must—*

*(a)state—*

*(i)the name and address of the person;*

*(ii)the name and address of any other party; and*

*(iii)the reason for making the application;*

*(b)be accompanied by—*

*(i)evidence to support the application; and*

*(ii)a copy of any relevant document; and*

*(c)be signed and dated by the person'*

6. After consideration of the terms of the application and the various documents produced, I consider that the application should be rejected on the basis that that it would not be appropriate to accept the application under Rule 8 (1) (c).The application should be rejected under Rules 5 & 70.

### **Reasons for Decision**

7. The Tribunal must have regard to the mandatory requirements contained in Procedural Rules 5, 8 & 70.
8. The Tribunal must consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, 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 that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
9. The Application form itself is dated 24 April 2019.
10. The Notice to Quit and section 33 Notice relied upon requires the tenant/Respondent to quit the Property on 1 May 2019. The Applicant relies on the terms of an e mail from the tenant in which he states he will only vacate the Property on 1 June 2019.

11. The Application was accordingly submitted prematurely. Accordingly, for this reason, this application must be rejected upon the basis that that application does not contain the mandatory information needed to satisfy the requirements in Rules 5 & 70 of the Procedural Rules, as the date in the Notices on which it relies had not yet arrived and principally, that it would not be appropriate to accept the application under Rule 8 as it was made prematurely and on an anticipatory basis. I also had regard to section 16 of the Housing (Scotland) Act 1988 which relates to security of tenure after the termination of a contractual tenancy and the provisions contained in that section. The remedy sought is misconceived.

**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.

**Ms Susan Christie**

Susan Christie  
Legal Member  
29 May 2019