



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

23 Nicol Place, Broxburn EH52 6GY

**Case Reference: FTS/HPC/EV/20/1287**

**JEMMA HELEENA BEGUM ("the Applicant")**

**MS KARYN FLYNN ("the Respondent")**

1. On 15<sup>th</sup> June 2020, an application was received from the Applicant. The application was made under Rule 66 of the Rules being an application by a private landlord for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
  - (a) Copy Short Assured Tenancy Agreement;
  - (b) Copy Form AT5
  - (c) Copy Notice to Leave;
  - (d) Copy Section 33 notice;
  - (e) Copy Section 11 notice with proof of service.

No proof of service of the notice to leave and section 33 notice were provided, under explanation that the Applicant gave these in person to the Respondent on 8<sup>th</sup> January 2020.

## DECISION

2. I 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."*

3. After consideration of the application, the attachments and correspondence from the

Applicant, I consider 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 DECISION**

4. '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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
  
5. It is an essential requirement in an application brought under section 33 of the *Housing (Scotland) Act 1988*, that the tenancy agreement has been brought to an end at its *ish* date by a notice to quit in the prescribed form. No notice to quit has been provided. Instead, the Applicant relies upon a notice to leave. That form of notice is one appropriate to end a private residential tenancy under the *Private Housing (Tenancies) (Scotland) Act 2016*. It is neither appropriate nor legally effective to end a short assured tenancy agreement such as the one to which this application relates.
  
6. For that reason, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

## **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.

Neil Kinnear

Neil Kinnear  
Legal Member  
27<sup>th</sup> August 2020