



**Decision with Statement of Reasons of Fiona Watson, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/19/1349**

**Re: Property at 148 Brooms Road, Dumfries, DG1 2EB  
 (“the Property”)**

**Parties:**

**Mr Robin Ridley (“the Applicant”)**

**Mr John Maxwell (“the Respondent”)**

1. On 3 May 2019 an application was received from the applicant. The application was made under Rule 109 of the Rules being an application by a landlord for possession of a property let under a Private Residential Tenancy and in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
2. The following documents were enclosed with the application:
  - (i) Copy Tenancy Agreement headed “Short Assured Tenancy Agreement”
  - (ii) Breakdown of rent payments
  - (iii) Copy letter to tenant dated 8 January 2019
  - (iv) Copy letter to tenant dated 24 April 2019
3. A request for further information was sent to the Applicant by letter and email dated 7 May 2019. On 13 May 2019 the Applicant provided the following additional documents by email:
  - (i) Copy letter to tenant dated 2 May 2019 entitled “Eviction Notice”
  - (ii) Copy notice to East Renfrewshire Council
4. On 16 May 2019 the Applicant provided the following additional documents by email:
  - (iii) Copy section 11 notice to Dumfries and Galloway Council

## Decision

5. I considered the Application in terms of section 52 of the 2016 Act and Rule 8 of the Rules.

Rule 8 states:-

*“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.”*

6. After consideration of the application together with the documents and further information provided by 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

7. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Midlenhall) 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.

8. Section 52 of the 2016 Act states as follows:

### *Applications for eviction orders and consideration of them*

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

(a) *subsection (3), or*

(b) *any of sections 54 to 56 (but see subsection (4)).*

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

(a) *is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

(b) *has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

Accordingly, in terms of section 52(3) as aforesaid, an application to the Tribunal must be accompanied by a copy of the notice to leave which has been given to the tenant.

9. A notice to leave is defined in section 62 of the 2016 Act and must be in the form prescribed by Scottish Ministers under section 62 (1) (d) of the 2016 Act and in terms of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The notice to leave lodged by the applicant and which was dated 2 May 2019 does not conform with the requirements of the said Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Accordingly, the terms of section 52(3) as aforesaid have not been complied with as a statutorily prescribed notice to leave has not been provided alongside the application, and on that basis the Tribunal cannot entertain the application.
10. The Tribunal considered the terms of the Tenancy Agreement, lodged with the Application. Whilst it was headed "Short Assured Tenancy Agreement" it was signed on 1 August 2018. There was no start date specified in Clause 3 of the lease (the start date having been left blank) and therefore in the absence of anything to the contrary, it was assumed that the lease commenced on the date of signing. Given that a Short Assured Tenancy could not be entered into on or after 1 December 2017, the tenancy agreement by default was deemed to be a Private Residential Tenancy and therefore the terms of the 2016 Act were deemed to have applied.
11. Accordingly, for the reasons outlined above I consider that the application for an order for repossession should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

### **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.

Fiona Watson

Fiona Watson  
Legal Member  
28 May 2019