



**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

Flat 2/1 24 Leven Street, Dumbarton, G82 1QG ("the property")

Case Reference: FTS/HPC/EV/19/1510

Fraser Cowan, 113 West King Street, Helensburgh, G84 8DQ ("the Applicant")

**Trevor Forrester, Flat 2/1. 24 Leven Street, Dumbarton, G82 1QG ("the
Respondent")**

1. By application dated 30 April 2019 the Applicant sought an order for recovery of possession of the property in terms of Rule 65 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement, Section 33 Notice and AT6, both dated 30 April 2019 and letter to the local authority dated 30 April 2019 advising of the intention to raise eviction proceedings. The Section 33 Notice and AT6 state that the Respondent is required to vacate the property by and that proceedings will not be raised before 9 June 2019. No notice to Quit was lodged with the application.

DECISION

2. 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.”

- 3. After consideration of the application and supporting documentation from the Applicant, 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

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 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.
5. The application lodged with the Tribunal seeks recovery of possession of an assured tenancy. The Applicant has served an AT6 and Notice in terms of Section 33 of the Housing (Scotland) Act 1988. Both Notices stipulate that vacant possession of the property is required on and proceedings will not be raised before 9 June 2019. The application was lodged on 30 April 2019. The Applicant has not served a Notice to Quit and as a result the contractual tenancy has not been brought to an end. Furthermore, the Tribunal cannot proceed to consider the application in terms of Section 18(6) of the 1988 Act as the application has been lodged prior to the date stipulated in the AT6 Notice which advises the tenant that the application cannot be lodged until 9 June 2019. The Applicant is therefore not entitled to seek an order for recovery of possession of the property until this date has passed. The application is therefore premature. It is also noted that the Section 11 Notice lodged with the application is not in the prescribed format and does not therefore comply with the requirements of Section 11 of the Homelessness etc (Scotland) 2003
6. The Legal member therefore concludes 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.

Ms Josephine Bonnar

Josephine Bonnar

Legal Member

7 June 2019
