

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

69 Woodside Avenue, Rutherglen, G73 3JT ("the Property")

**Case Reference: FTS/HPC/EV/19/1603**

**MR BASSAM AID ("the Applicant")**

**MRS MARGARET CAIRN ("the Respondent")**

1. The application was made under Rule 109 of the Rules being an application for a Private Residential Tenancy Eviction Order. The application was accompanied by copies of a notice to leave dated 4 April. A partial copy of the written tenancy agreement between the parties was also provided along with photographs in support of the application. The application specified that the Applicant was seeking an order on Grounds 11 and 13 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The application also made reference to non-payment of rent.
2. The notice to leave only specified a breach of the tenancy agreement, being Ground 11 of Schedule 3 of the 2016 Act. Parts 3 and 4 of the notice to leave were not complete. There was nothing entered in the section regarding evidence to support the eviction action. Furthermore, there was no date given as the earliest date that an application could be made to the Tribunal nor was the notice to leave signed or dated.

**Decision**

3. The circumstances in which an application is to be rejected are governed by Rule 8 of the Chamber Procedural Rules. That Rule provides:-  
*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, the attachments and correspondence from the Applicant’s solicitor, 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. In this application, the Applicant is relying on the notice to leave which is undated. As the only ground specified within the notice to leave is Ground 11 of Schedule 3 of the 2016 Act, the relevant notice period in terms of Section 54 of the 2016 Act is 28 days.

6. Section 52(3) of the 2016 Act states:-

*(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*

Section 62 of the 2016 Act states:-

*(1)References in this Part to a notice to leave are to a notice which—*

*.....*

*(b)specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*.....*

*(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

In the present case the Applicant is seeking to rely on a notice that specifies no date on which the landlord expected to become entitled to make an application for an eviction order.

Furthermore, the notice was undated and was not accompanied by any proof of service. The Tribunal is unable to ascertain when it was served. The notice to leave submitted by the Applicant does not comply with Sections 62(1)(b) and 62(4) of the 2016 Act. Section 62 of the 2016 Act defines a notice to leave. The date to be specified in Part 4 is prescribed by Section 62 of the 2016 Act and is essential to the validity of the notice. The Application cannot, therefore, be said to be accompanied by a notice to leave as is required by Section 52(3) of the 2016 Act.

7. '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 given the invalidity of the notice to leave. Accordingly, the present application is rejected on 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.

**Mr Alastair Houston**

Mr Alastair Houston

Legal Member

11 June 2019

