



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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 Procedural Rules")

in connection with

60 Logan Street, Blantyre, Glasgow, G72 0NS

Case Reference: FTS/HPC/EV/19/1842

Mr Rajinder Lall ("the applicant")

Affitto Estate Agents ("the applicant's representative")

Miss Claire Taylor ("the respondent")

1. On 14 June 2019, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules being an application for a Private Residential Tenancy Eviction Order. The following documents were enclosed with the application:-

- Copy Assured Shorthold Tenancy Agreement dated 30 May 2017 but not specifying a commencement date;
- Copy form AT5 dated 2 December 2017;
- Copy notice to quit dated 25 May 2018; and
- Copy notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 25 May 2018.

Andrew Upton

DECISION

2. 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."

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 appears to be frivolous within the meaning of Rule

8(1)(a) of the Procedural Rules, and I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) 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. 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.
5. This application is confused in the extreme. It is an application for recovery of possession of a property let under a Private Residential Tenancy. In support of that, we have been provided with a copy Assured Shorthold Tenancy Agreement (which is an English form of tenancy not applicable to Scotland) dated 30 May 2017, some six months before the Private Residential Tenancy came into being. However, it is accompanied by a form AT5 (being a notice in terms of section 32 of the Housing (Scotland) Act 1988 which requires to be served on a prospective tenant prior to the commencement of an Assured Tenancy in order to make that tenancy a Short Assured Tenancy) dated 2 December 2017, which is the day after the creation of Private Residential Tenancies and abolition of the creation of new Assured Tenancies; Short or otherwise. To make matters worse, the notices served are a notice to quit and notice in terms of section 33 of the 1988 Act, which bring a Short Assured Tenancy to an end.
6. That the applicant has raised this application under rule 109 is indicative that he accepts that the tenancy was created after 1 December 2017 and is therefore a Private Residential Tenancy. That being so, he can only bring that

tenancy to an end by service of a Notice to Leave in appropriate form compliant with the terms of the Private Housing (Tenancies) (Scotland) Act 2016. He does not appear to have served such a notice. Accordingly, this action appears bound to fail. It is frivolous within the meaning of Rule 8(a).

7. However, in any event, the application is so confused and provides so little explanation as to what it is that the applicant is seeking and why he says he is entitled to it, that it would be inappropriate to accept the application at this time.

8. For those reasons, it is my view that the application is frivolous within the meaning of Rule 8(a). Further, it is my view that it would be inappropriate in these circumstances to accept this application in terms of Rule 8(c). I reject the application.

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.

Andrew Upton

Andrew Upton
Legal Member
28 June 2019