



**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

**97 Hogarth Avenue, Glasgow ("the Property")**

**Case Reference: FTS/HPC/EV/20/2430**

**Derek Bolton, Kimberly Bolton, 19 Westminster Terrace, Flat 2/2, Glasgow ("the  
Applicants")**

**Andrea Green, 97 Hogarth Avenue, Glasgow ("the Respondent")**

1. By application received on 23 November 2020 the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a Notice to Leave and emails from residents in support of the application. Part 2 of the Notice to leave states that an application for an eviction order is to be sought on grounds 14 and 15. Part 3 states that the eviction grounds are 7, 11 and 12. The application form states that an eviction order is sought on grounds 7, 11 and 12.
2. On 2 December 2020, the Tribunal issued a request for further information to the Applicant. The Applicants were asked to clarify the eviction grounds, as the grounds stated in part 3 of the Notice and the application form appeared to be incorrect. They were also asked to provide details and evidence of service of

the Notice to leave and a copy of the section 11 Notice sent to the local authority. No response was received. The request was re-issued to the Applicants on 15 January 2021. Again no response was received. On 1 March 2021 the Tribunal issued a further request for information, asking for the same information as before but also requesting a copy of the tenancy agreement. The Applicants representative responded to this letter and provided a copy of the tenancy agreement and a copy of an email to the local authority. A Notice to Leave in different terms was also submitted. This stated that the eviction grounds were 12, 13 and 14. No evidence of service was provided, although this had now been requested on three separate occasions. Furthermore, the Section 11 Notice was not provided. On 25 March 2021, a further letter was issued to the Applicants. The Applicants were directed to provide details and evidence of service of the Notice to leave (and confirmation of which Notice was being relied upon), an amended application form which specified the correct eviction grounds, an explanation for the inclusion of ground 12 as this carries a six month notice period which did not appear to have been given, a copy of the section 11 notice and evidence in support of ground 13, namely that the Respondent had a relevant conviction, if this was being relied upon. The Applicants' representative replied and provided a copy of the section 11 notice. She failed to provide the other information specified in the letter. In particular, she failed to provide evidence of service of the notice to leave, an explanation of their position regarding ground 12, an amended form specifying the correct eviction grounds or any evidence in support of ground 13.

## **DECISION**

3. 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.”*

- 4. After consideration of the application and the documents submitted by the Applicant in support of same, 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 Rules.**

#### **Reasons for Decision**

5. '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.
6. The application submitted by the Applicants states that an eviction order is to be

sought on grounds 7, 11 and 12. No evidence has been submitted in relation to ground 7, property is required for religious purposes, or ground 11, breach of tenancy. The Applicant has submitted evidence which relates to antisocial behavior, grounds 14 and 15. Furthermore, the Notices to leave which have been submitted both state that the Applicant relies on ground 14, although the first notice refers to grounds 14 and 15 in part 2 and 7, 11 and 12 in part 3. The second notice refers to grounds 12, 13 and 14. In response to a request for further information, the Applicant has submitted evidence in support of ground 12, but not ground 13, the tenant has a relevant conviction. The Applicant has been directed on several occasions to clarify the eviction grounds relied upon and also to provide a replacement application form which specifies the correct ground. They have failed to do so.

7. Section 52(3) of the 2016 Act states, "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. The Applicant has submitted two Notices to leave in support of the application. They have indicated that the second Notice replaces the first. However, despite being directed to do so on several occasions, the Applicants have failed to provide any information or evidence that the Notice has been given to the Respondent. Furthermore, in the absence of this evidence, the Tribunal cannot establish whether the Applicants have complied with Section 54 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) which specifies the notice periods which must be given to a tenant when a notice to leave is served.
8. Rule 109 of the Procedure Rules requires an application to be submitted with evidence of the eviction grounds. The Applicants have submitted evidence for grounds 12 and 14, but not ground 13. They have also failed to provide this information in response to several letters from the Tribunal directing them to do so.
9. As the application appears to identify the wrong eviction grounds and as the Applicants have failed to provide evidence showing how and when the Notice to leave was given to the Respondent, evidence in support of one of the eviction grounds specified in the Notice to leave and have failed to provide information and documents despite having been directed to do so on several occasions by the Tribunal, the Legal Member determines 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.

**Josephine Bonnar**  
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Josephine Bonnar  
Legal Member  
20 April 2021