

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

---



**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**

**20 Eastgreenlees Gardens, Cambuslang, G72 8DB**

**Case Reference: FTS/HPC/CV/19/2784**

**Kirsty Helliwell, 33 Bowmore Crescent, Thorntonhall, G74 5DD ("the  
Applicant")**

**Robert Tinney, whereabouts unknown ("the Respondent")**

1. By application dated 14 August 2019 the Applicant seeks an order for payment. Documents lodged in connection with the application include a copy tenancy agreement and rent statement. The application states that the current address of the Respondent is not known and service by Advertisement is required.
2. A request for further information was issued to the Applicant on 24 September 2019. The Applicant was asked to instruct a trace in relation to the Respondent to evidence the need for service by advertisement. The Applicant was also asked to clarify the basis upon which the application is made, as the property is owned by a third party. Lastly, the Applicant was asked to provide a rent statement. The Applicant responded to the request on 8 October 2019. She advised that the sum due by the Respondent had reduced. She did not provide a trace on the Respondent and did not explain the basis upon which she is entitled to make the application. No rent statement was submitted. A

further request for information was issued on 23 October 2019. The Applicant was advised that a response should be provided within 21 days. No response was received.

## 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, the supporting documentation

**and correspondence 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**

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 lodged with the Tribunal seeks an order for payment in terms of the Rule 70 of the Rules. The application relates to rent arrears owed by the Respondent in terms of a tenancy agreement for the property. Title to the property is in the name of Prime Home Letting Limited, not the Applicant. The Applicant has failed to identify the basis upon which she is entitled to make the application. She has failed to provide an up to date rent statement showing the sum due. She has failed to carry out a trace in relation to the Respondent in connection with her application for service by advertisement. The Applicant has failed to respond to two requests for further information issued by the Tribunal requiring the Applicant to rectify the defects in the application.
7. In the absence of information requested and as the Applicant has failed to respond to requests for further information required by the Tribunal, the Legal member 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.

Josephine Bonnar

Josephine Bonnar  
Legal Member  
25 November 2019