



**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**

**8 Lornshill Crescent, Alloa, Clackmannanshire, FK10 2JL ("the property")**

**Case Reference: FTS/HPC/EV/19/3617**

**Stuart Comrie, 11 Goshen Place, Stenhousemuir, FK5 4RS ("the Applicant")**

**Daniella Barnes, 8 Lornshill Crescent, Alloa, Clackmannanshire, FK10 2JL  
("the Respondent")**

1. By application dated 1 November 2019 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged documents in support of the application including a blank unsigned tenancy agreement and AT5 Notice and a document entitled Notice to leave dated 11 September 2019. The application states that the Applicant seeks possession of the property because of rent arrears in terms of ground 8 of Schedule 5 of the Housing (Scotland) Act 1988.
2. A request for further information was issued to the Applicant asking the Applicant to provide a copy of the tenancy agreement signed by the parties, a copy of the completed AT5 Notice issued to the Respondent and various other documents. The Applicant responded stating that his copy of the tenancy agreement had been lost and he was unable to provide same. He provided a copy of an AT5 Notice dated 2 March 2016

## 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.*

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*(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 documents lodged 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 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 recovery of possession of a short assured tenancy in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant has not provided a copy of the tenancy agreement signed by the Respondent. No details of the start date of the tenancy have been provided although the AT5 Notice is dated 2 March 2016. The Applicant has lodged a copy of a notice which he advises has been issued to the Respondent prior to lodging the application with the Tribunal. The Notice is entitled "Notice to Leave" and refers to eviction grounds in terms of the Private Housing (Tenancies) (Scotland) Act 2016, not grounds for possession in terms of the 1988 Act
7. Prior to making an application in terms of Section 33 of the 1988 Act and Rule 66 of the Rules a landlord requires to issue a tenant with a Notice to Quit and Notice in terms of section 33. In terms of section 33 "the First-tier tribunal shall make an order for possession of a house if the Tribunal is satisfied (a) that the short assured tenancy has reached its end; (b) that tacit relocation is not operating and (d) that the landlord (or where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house". The Applicant has not provided a valid Notice to Quit terminating the tenancy contract. In the absence of a valid Notice to Quit and a copy tenancy agreement the Applicant cannot establish that he has complied with Section 33. Furthermore, although the Applicant has provided a copy of a AT5 Notice, in the absence of a copy tenancy agreement it is not possible to establish that this notice relates to the tenancy which is the subject of the application. The Applicant is therefore unable to establish that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act. The Tribunal is therefore satisfied that the Applicant has not complied with the requirements of section 32 and 33 of the 1988 Act.
8. The Legal Member proceeded to consider whether the application can be considered in terms of Section 18 of the Act. However, the Applicant has failed to issue the Respondent with an AT6 Notice in terms of Section 19 of the 1988 Act. The Notice which has been issued is entitled "Notice to leave"

and refers to grounds for an eviction order in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and not grounds for recovery of possession in terms of the 1988 Act. In the absence of a copy of the tenancy agreement, a valid Notice to Quit and AT6 Notice, the Applicant has not complied with the requirements of section 18 and 19 of the 1988 Act and the application cannot be considered in terms of Rule 65.

9. 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.

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Josephine Bonnar  
Legal Member  
9 December 2019