

**DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)**

**Chamber Ref:** FTS/HPC/EV/19/3669

**Re: Property at 72 Craiglea Road, Renfrew, PA4 8NH (“the Property”)**

**Parties:**

George McCann, Hugh McCann & Christine Bagnall (“the Applicant”)  
Lynsay Dickson (“the Respondent”)

**Virgil Crawford (Legal Member)**

**BACKGROUND**

1. On 4 October 2019 an application was received from the applicant under Rule 65 of the Rules, being an application by a private landlord for an order to terminate a short assured tenancy due to rent arrears,
2. Attachments were provided with the application including a copy of the lease, a copy notice in terms of section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) - commonly referred to as a form AT6 – a copy notice to quit and a copy notice intimated to the local authority in terms of section 11 of the Homelessness (Scotland) Act 2003,
3. The form AT6 intimated to the Respondent stated that proceedings would not be raised before 7 January 2020,
4. The application was considered by the Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

**DECISION**

5. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:
  - 5.—(1) *An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*
  - (2) *The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*

*(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

*(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

*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;*

*...*

*(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.*

6. After consideration of the application and attachments, 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 THE DECISION**

7. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, [1997] *EWCA Civ 1575*. 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 this definition that the Legal Member has considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
8. The form AT6 served on the Respondent clearly stated that proceedings would not be raised before 7 January 2020. That being so, it is not competent to grant an order in proceedings raised before then;
9. Separately, the Tribunal notes that the lease does not contain any provision for termination of the tenancy in terms of Ground 11 of Schedule 5 to the 1988 Act. In the event that a further application is submitted on the same ground the Applicant will be expected to address the issue of whether the application can be granted having regard to the terms of s18 of the 1988 Act;

10. For the foregoing reasons, the Legal Member does not consider there to be any prospect of success of this application and it is rejected on the basis that the application is frivolous.

### **RIGHT OF APPEAL**

#### **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:-

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

Virgil Crawford

**29 November 2019**

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