



**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

203 West Main Street, Whitburn, West Lothian, EH47 0LP

Case Reference: FTS/HPC/EV/19/3842

**John McIntyre, Elizabeth McIntyre 85 East Main Street, Whitburn, West
Lothian, EH47 0RQ ("the Applicant")**

**Ashleigh Logan 203 West Main Street, Whitburn, West Lothian, EH47 0LP ("the
Respondent")**

1. By application dated 25 November 2019 the Applicant seeks an eviction order against the Respondent. A copy Notice to leave and Section 11 Notice were submitted in support of the application. On 4 December 2019 a letter requesting further information was issued to the Applicant. The Applicant was asked to provide evidence that the section 11 Notice had been served on the local authority. No response was received. On 24 December 2019 a further letter was issued to the Applicant asking again for this evidence. In addition the Applicant was asked to provide information on how and when the Notice to Leave was served on the Respondent. No response was received. On 20 January 2020 a reminder was issued to the Applicant. The Applicant was also asked in this letter to provide a copy of the tenancy agreement and confirmation that they wished to proceed with the application. A response was required within 7 days. No response was received.

DECISION

2. 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.”

3. **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

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 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.
5. The Applicant has been issued with letters requesting further information and documentation on three occasions - 4 and 24 December 2019 and 20 January 2020. The Applicant has failed to respond to all three requests.
6. In the absence of the documentation requested and as the Applicant has failed to respond to three requests for further information required by the Tribunal, 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.

Josephine Bonnar
Legal Member
21 February 2020

