



**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

17 Thurston Road, Glasgow, G52 2JH ("the property")

Case Reference: FTS/HPC/EV/19/3937

**SAVU Properties Ltd, 276 Glasgow Road, Eaglesham, G76 0EW ("the
Applicant")**

Danielle Park, 17 Thurston Road, Glasgow, G52 2JH ("the Respondent")

1. By application dated 9 December 2019 the Applicant seeks an eviction order in terms of Rule 109 of the Rules. The Applicant lodged documents in support of the application including a copy Notice to Leave dated 9 December 2019. The Notice to Leave states that "an application will not be submitted to the Tribunal for an eviction order before 4/1/2020" being "the earliest date that Tribunal proceedings can start"

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 and supporting documentation 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 application lodged with the Tribunal seeks an eviction order. The Applicant has served a Notice to Leave which is dated 9 December 2019 and states that the earliest date upon which a Tribunal application can be submitted is 4 January 2019. Section 54(1) of the Private Housing (Tenancies) (Scotland) Act 2016 states " A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice". Section 54(2) provides that the relevant period of notice for an application based on rent arrears is 28 days. The Legal Member notes that, assuming the Notice was given on 9 December 2019, that 28 days' notice has not been given. Furthermore, the application is premature as the earliest date for submitting the application has not passed. 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
13 December 2019