



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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 Procedural Rules")

in connection with

73 High Street, New Pitsligo, Fraserburgh, AB43 6NF ("the Property")

Case Reference: FTS/HPC/EV/19/3967

Solbud Property & Development Company Ltd ("the applicant")

Ms Ashleigh Cumming ("the respondent")

1. On 13 December 2019, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules being an application for an Eviction Order in respect of a property let on a Private Residential Tenancy. The following documents were enclosed with the application:-

- Copy Private Residential Tenancy Agreement
- Copy Notices to Leave dated 8 November 2019
- Copy Rent Schedule
- Copy Section 11 Notice to Aberdeenshire Council

DECISION

2. I considered the application in terms of Rule 8 of the 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 attachments and correspondence from the applicant, I consider that the application should be rejected on the

basis that it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) 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. L.R. 9. At page 16, 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 that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
5. The Housing (Scotland) Act 1988 created two types of residential tenancy: the Assured Tenancy and the Short Assured Tenancy. Those types of tenancy came into being on 2 January 1989 and endured until 30 November 2017. On 1 December 2017, it became impossible to create a new Assured or Short Assured Tenancy. In their place, the Private Residential Tenancy came into being; a creature of statute, created by the Private Housing (Tenancies) (Scotland) Act 2016.
6. This application proceeds on the basis that the tenancy is a Private Residential Tenancy. I assume that is because it was signed on 9 August 2018. However, whilst a tenancy is capable of being created by execution of a formal tenancy agreement, that is not a determining factor. The real question is when did agreed occupation as landlord and tenant begin.
7. In this case, the tenancy agreement states that the tenancy began on 9 January 2017. The Rent Schedule shows that rent was paid by the Respondent to the Applicant from 13 January 2017, having been due from 9 January 2017. Taken together, it seems clear that the tenancy in this case

started on 9 January 2017, approximately eleven months before the Private Residential Tenancy came into being. It follows that this tenancy is not a Private Residential Tenancy; it is either an Assured or a Short Assured Tenancy. I need not determine which at this stage.

8. The basis of the Application is flawed. The notices produced support an application for an eviction order under a Private Residential Tenancy and not an Assured or Short Assured Tenancy.
9. For those reasons, the application cannot, in my view, be successful. It therefore meets the test of frivolity in Rule 8(1)(a), and I reject it. Even if it did not, it is my view that it would not be appropriate to accept the application for the reasons set out above, and I would separately reject the application in terms of Rule 8(1)(c).

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.

Andrew Upton

Andrew Upton
Legal Member
18 December 2019