

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

15 Muirfield Road, Falkirk, FK5 3BS ("the property")

Case Reference: FTS/HPC/EV/19/4047

**John Gillies, 58 Belvedere Road, Bexley Heath, kent, DA7 4NZ ("the
Applicant")**

Stephanie Muirhead, 15 Muirfield Road, Falkirk, FK5 3BS ("the Respondent")

1. By application dated 16 December 2019 the Applicant seeks an order for possession of the property in terms of the Rule 66 of the Rules. A copy tenancy agreement, section 11 Notice, rent statement and post office receipt were submitted in support of the application. On 23 December 2019 a letter requesting further information was issued to the Applicant. The Applicant was advised that he required to provide a copy of the AT5 notice, Notice to Quit and Section 33 Notice. On 24 December 2019 the Applicant's agent responded by email stating that the information requested had already been provided with the application. On 14 January 2020 a further request for information was issued stating that the required documentation had not been received with the application and should now be provided. The Applicant was also asked to provide the date and method of service of the Section 33 Notice and Notice to Quit. The response was required by 28 January 2020. 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 application lodged with the Tribunal seeks an order for possession in terms of the Rule 66 of the Rules. Rule 66 states, "Where a landlord makes an application under Section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must (b) be accompanied by a copy of –... (ii) the notice by landlord that the tenancy is a short assured tenancy: (iii) the notice given to the tenant under section 33(1)(d) of the 1988 Act: (iv) the notice to quit served by the landlord on the tenant." The Applicant has failed to lodge a copy of the AT5, Notice in terms of Section 33 and Notice to Quit. The Applicant has been issued with letters requesting this documentation on 23 December 2019 and 14 January 2020. He has failed to provide the information and has failed to respond to the letter of 14 January 2020.
6. In the absence of the documentation required in terms of Rule 66 and as the Applicant has failed to respond to a request 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
7 February 2020