

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

325 Hilton Drive, Aberdeen, AB24 4PQ ("the property")

Case Reference: FTS/HPC/CV/20/0092

Emma Williamson, 71 Abbot Avenue, London, SW208SG ("the Applicant")

**Alex Jesus Padilla Vargas, 325 Hilton Drive, Aberdeen, AB244PQ ("the
Respondent")**

1. By application dated 14 August 2019 the Applicant seeks an order in terms of Rule 111 of the Rules. The application states that the Respondent has given notice but has failed to vacate the property. The Applicant states " I therefore require a civil order from the FTT requiring the occupant to vacate the property." A copy private residential tenancy agreement and copy text messages were lodged with the application.

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 which requires the occupant to vacate the property. The Legal Member notes that the application has been submitted under the wrong rule. The Applicant seeks an eviction order in terms of the Private Housing Tenancies (Scotland) Act 2016. This requires to be submitted in terms of Rule 109. In terms of Rule 109 (b) it must "be accompanied by (1) evidence showing that the eviction ground or grounds has been met; (ii) a copy of the notice to leave given to the tenant as required under Section 52(3) of the 2016 Act; and (iii) a copy of the notice to the local authority as required under section 56(1) of the 2016 Act." The Applicant has not lodged a copy of the notice to the local authority or a notice to leave. Furthermore, the ground stated in the application for the eviction order is not one of the grounds listed in schedule 3 of the 2016 Act. Section 51 of the 2016 Act states, "(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies, (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies."
6. As the application is not accompanied by the documents required by Rule 109, and as the Applicant seeks an eviction order on a ground not contained within schedule 3 of the 2016 Act, the Legal Member concludes that the Tribunal does not have jurisdiction to consider the application and 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
27 January 2020