

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS LEGAL MEMBER OF THE  
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

20 Berryknowes Drive, Glasgow, G52 2DZ

**Case Reference: FTS/HPC/EV/20/0370**

**MULLBERRY HOMES LIMITED, 45 Preston New Road, Blackburn, Lancashire, BB2 6AE ("the  
Applicant")**

Represented by Derek Barnes, c/o Mulberry Homes Limited, 45 Preston New Road, Blackburn,  
Lancashire, BB2 6AE

**JOHN EL-BOURDANY, also known as JOHN KENNEDY, 20 Berryknowes Drive, Glasgow, G52  
2DZ ("the Respondent")**

**BACKGROUND**

1. On 3 February 2020 the Applicant lodged an application for eviction of the Respondent from the property 20 Berryknowes Drive, Glasgow, G52 2DZ ('the property'). The application was made in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was based on ground 1 (intention to sell let property), possibly ground 8 (no longer an employee) and ground 11 (non-rent breach

of tenancy). Together with the application form to the Tribunal dated 31 January 2020 the Applicant's Legal Department enclosed a copy of a purported notice to leave dated 19 December 2019 without any Post Office certificate of posting.

## DECISION

2. For the reasons given below this application is rejected.

## REASONS FOR DECISION

3. 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; . . .*

*(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."*

4. For the purposes of this rule the word 'frivolous' does not have its ordinary day-to-day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in*

*this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".*

5. The application was made under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. Section 52(2) and (3) of the Act provide that the Tribunal cannot entertain an application for an eviction order if it not accompanied by a copy of a notice to leave which has been given to the tenant.

6. Section 62 of the Act specifies the requirements for a notice to leave. In particular Section 62(1)(d) of the Act states:

‘References in this Part [of the Act] to a notice to leave are to a notice which. . . (c) states the eviction ground or grounds on the basis of which the landlord proposes to seek an eviction order in the event the tenant does not vacate the let property . . .(d) fulfils . . . requirements specified by the Scottish Ministers in regulations’

Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (SSI 2017 No.297) requires that the notice to leave must be in the form set out in schedule 5 to those Regulations. Schedule 5 then provides a form. That form includes important information for the tenant on obtaining advice and on the effect of the notice. It also requires the landlord to state clearly the ground of eviction which it is relying upon.

7. The copy notice to leave provided by the Applicant was not in the form set out in schedule 5. It did not contain the important information for the tenant on obtaining advice and on the effect of the notice. It did not label the grounds being relied on as required by the form in schedule 5. It follows that copy notice to leave dated 19 December 2019 was not capable of being a notice that met the requirements of section 62(1)(d) and possibly (c) of the Act. These were material failures and not merely errors in completion of the statutory form.

8. In these circumstances I take the view that by making an application to the Tribunal based on an invalid notice to leave the Applicant has breached section 52(3) of the Act. This has the result under section 52(2) that the Tribunal cannot entertain the application at all. In

those circumstances the current application is misconceived and doomed to fail.

9. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' in its legal meaning for the purposes of rule 8(1)(a) of the Procedural Rules. In addition under rule 8(1)(c) and on the same basis I have good reason to believe that it would not be appropriate to accept this application and send it to a case management discussion for further consideration. The application must therefore be rejected.
10. I note in passing that if a notice to leave founds on breach of a particular provision of the tenancy agreement, this provision should be specified in part 3 of the statutory form so that the tenant is left in no doubt as to the justification for the notice which may ultimately bring about the termination of what is otherwise an indefinite tenancy.

### **What you should do now**

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.

# D Bartos

David Bartos  
Legal Member acting under delegated powers  
12 February 2020