

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 Rules")

in connection with

17 Airline Place, Westfield Avenue, Cupar, KY15 1AA

Case Reference: FTS/HPC/EV/18/0689

Mr Ewan Bell ("the Applicant")

Mr Craig Halley ("the Respondents")

1. On 20 March 2018 an application was received from the applicant. The application was made under Rule 109 of the Chamber Procedural Rules being an application by a private landlord for a private rented tenancy eviction order. Attachments were provided with the application form to support the application and these attachments included Notice to Quit, an AT6 Notice and Section 11 Notice. A partial tenancy agreement was also attached.
2. In terms of the partial tenancy agreement, the landlord is noted as Mr Ewan Bell. He is making the application on his own behalf. The Respondent is noted as the tenant.
3. The Application seeks a Private Residential Tenancy Eviction Order under Rule 109 of the Chamber Procedural Rules. Rule 109 applications relate to tenancies beginning on or after the 1st December 2017. Part 6 of the Application lodge by the Applicant states that the Respondent moved into the property on the 19th September 2017. The partial tenancy agreement outlines that the tenancy commenced on the 19th September 2017.

DECISION

4. 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."

- 5. After consideration of the application and the attachments, 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

6. '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, as it is misconceived and has no prospect of success.
7. The issue identified in this action is whether the Applicant has identified the correct type of application. The Applicant has set out in Part 6 of the application form that the tenant moved into the property on the 19th September 2017. The partial tenancy agreement lodged with the application states that the tenancy commenced on the 19th September 2017.
8. The Applicant is seeking a Private Tenancy Eviction Order under Rule 109 of the Chamber Rules. Rule 109 relates to the new Private Residential Tenancies created in the Private Housing (Tenancies) (Scotland) Act 2016. Applications seeking an order under Rule 109 relate to tenancies that began **on or after** 1st December 2017. This is set out on Form E. It would appear from the details completed by the Applicant in his application and in the partial tenancy agreement lodged that the tenancy in this case began **before** 1st December 2017, namely on the 19th September 2017.
9. The Tribunal cannot make a Private Residential Tenancy Eviction Order where the tenancy was entered into before 1st December 2017. Such an Order is only available for Private Residential Tenancies that began on or after 1st December 2017. An Applicant is required to correctly identify the type of application they are making to the Tribunal. The application is therefore misconceived and frivolous.

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.

Miss Eleanor Mannion
Legal Member
18 April 2018