

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

3/R, 264 Hilltown, Dundee, DD3 7AR ("the Property")

Case Reference: FTS/HPC/EV/22/2680

Mohammed Fahmi, 107 Bruncker Road, Yagoona, Sydney, Australia, NSW 2199 ("the Applicant")

Mr Maciej Wleklinski, 3/R, 264 Hilltown, Dundee, DD3 7AR ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged a tenancy agreement, Section 11 Notice and Notice to Leave in support of the application. The tenancy agreement states at clause 4 that "The tenancy will commence on 18-2-16 and will end on 18-2-2017. If the agreement is not brought to an end by either party on the above date, it will continue thereafter on a monthly basis until terminated by either party giving not less than 2 months notice to the other party." The Notice to Leave is issued under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. The date specified in Part 4 of the Notice is 29 July 2022. The Notice is unsigned and undated.

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 and the documents submitted by the Applicant in support of same, 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 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 is not accompanied by a Notice of proceedings for possession (Form AT6) as required by Section 19 of the 1988 Act. The relevant section of the Act is as follows:-

19 Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

- (a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or*
- (b) considers it reasonable to dispense with the requirement of such a notice.*

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

- (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and*
- (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.*

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

- (a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and*
- (b) in any other case, two weeks.*

(5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.

(6) Where a notice under this section relating to a contractual tenancy—

- (a) is served during the tenancy; or*

(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy, the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

6. The Applicant has produced a Notice to Leave which is in terms of Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 which has no application to short assured tenancies or assured tenancies.
7. The Applicant has not produced a Notice to Quit in support of the application.
8. The Legal Member notes that the Tribunal wrote to the Applicant's representative by letter of 5 August 2022 requesting a copy of the notice served by the landlord indicating an intention to raise proceedings (Form AT6) and requesting a copy of the Notice to Quit. In response, the Applicant's representative submitted a copy of the Notice to Leave. The Applicant has not produced a copy of the Notice of Proceedings as required by Section 19 of the 1988 Act. The Tribunal therefore cannot entertain the application.
9. The Legal Member therefore determines 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.

Nicola Irvine
Legal Member
6 September 2022