

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

19 Westwood Walk, Montrose, Angus, DD10 9DA ("the Property")

Case Reference: FTS/HPC/EV/22/2787

Ms Fiona Herald, 55c John Street, Montrose, Angus, DD10 8LZ ("the Applicant")

Ms Doreen Sellar, 19 Westwood Walk, Montrose, Angus, DD10 9DA ("the Respondent")

1. The Applicant submitted an application for an eviction order in terms of Rule 65 of the Rules and Section 19 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged a copy of a short assured tenancy agreement, a Notice to Leave, form AT6 and a Notice to Quit in support of the application. The Notice to Leave was issued under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice to Quit form used appears to be an English form and refers to legislation that has no application in Scotland. No Section 11 Notice was produced, as required in terms of the Homelessness Etc (Scotland) Act 2003. No evidence of service has been produced in relation to any of the Notices produced.

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 supported by relevant documentary evidence. The Notice to Quit is not valid in Scotland. It does not comply with the requirements of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended. 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.
6. The form AT6 provided states at Part 2 that the ground of eviction relied upon is “ Ground 1 – the landlord intends to sell the let property”. This is not a valid ground of eviction in terms of the Housing (Scotland) Act 1988.
7. The Tribunal wrote to the Applicant on 15 September 2022 setting out a number of issues with the application. The Applicant was asked to clarify whether the tenancy was converted to a Private Residential Tenancy and if so, was asked to clarify the notice period given in the Notice to Leave; she was advised that the Notice to Quit produced was not valid; she was advised that no Section 11 Notice had been submitted; and that the ground stated in the application is not a valid ground in terms of the Housing (Scotland) Act 1988. The Applicant was advised to take independent legal advice. The Applicant responded on 15 September 2022 asking the Tribunal to send templates of documents required. The Tribunal sent an email to the Applicant on 21 October 2022 advising that the Tribunal cannot provide legal advice. The Applicant was reminded that the letter of 15 September 2022 set out the matters to be addressed. The Applicant did not address the issues raised.
8. 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.



Legal Member

17 November 2022