

**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

**11 South Dean Road, Kilmarnock, KA3 7RB ("the Property")**

**Case Reference: FTS/HPC/EV/22/3958**

**Miss Kirsty Macleod, 9 Oliphant Drive, Kilmarnock, KA3 7JA ("the Applicant")**

**Ms Alison McConnell Donnelly, 11 South Dean Road, Kilmarnock, KA3 7RB ("the Respondent")**

1. The Applicant submitted an application for an eviction order in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). In support of the application, the Applicant lodged a copy of the tenancy agreement, notice to quit and notice in terms of section 33 of the 1988 Act, the AT5 and a section 11 notice.

**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 Tribunal wrote to the Applicant on 24 November 2022 requesting further information to allow the application to be considered. The Applicant was advised that the Tribunal required a response with the necessary information by 8 December 2022, otherwise the President may decide to reject the application.
6. The Tribunal wrote to the Applicant again on 6 January 2023, noting that some

information had been provided but further information was required. The Tribunal allowed until 20 January 2023 for the Applicant to respond. The Applicant asked for an extension of time to allow her to take advice. On 25 January 2023, the Tribunal granted an extension of 14 days for the information to be provided.

7. On 15 February 2023, the Tribunal received a request from the Applicant's representative to provide a copy of the case papers. An extension of time to 14 March 2023 was allowed for further information to be provided.
8. The Applicant's representative responded on 15 March 2023 advising that some further information would be submitted.
9. A further letter was issued to the Applicant's representative on 13 April 2023, noting that further information was still awaited. The Tribunal requested a response by 4 May 2023 and advised that if there was no response, the President may reject the application. No response was received.
10. Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") sets out the requirements of making an application. In terms of that Rule, the Chamber President or another member with delegated powers of the Chamber President may request further documents. The Rule provides that an application is not accepted where the outstanding documents requested are not received within a reasonable period.
11. The Applicant has been given several opportunities over many months to provide the required information and has failed to do so. 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**

Nicola Irvine  
Legal Member  
9 June 2023