

**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

**40 Millhall Court, Airdrie, North Lanarkshire, ML6 7GE ("the Property")**

**Case Reference: FTS/HPC/EV/23/0934**

**Miss Ifeyinwa Onwuazor, 28 Todds Walk, Andover Road, London N7 7RB ("the Applicant")**

**Mr William McLaughlin, 40 Millhall Court, Airdrie, North Lanarkshire, ML6 7GE ("the Respondent")**

1. The Applicant submitted an application for an eviction order in terms of Rule 109 of the Rules and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). In support of the application, the Applicant lodged a copy Notice to Leave, section 11 notice and a rent statement. The Notice to Leave which was produced is dated 4 May 2022. The notice stated that "an application will not be submitted to the Tribunal for an eviction order before 29<sup>th</sup> July 2022." The application was submitted on 22 March 2023.

**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 31 May 2023 advising that the Notice to Leave appeared to have expired and requesting confirmation that the application would be withdrawn. The Applicant was advised that the Tribunal required a response with the necessary information by 14 June 2023, otherwise the

President may decide to reject the application. No response was received from the Applicant.

6. Section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that “a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired”. Therefore the application has no prospects of success.

### **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  
13 July 2023