

**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

**6 Stirling Street, Coatbridge, ML5 5QP ("the Property")**

**Case Reference: FTS/HPC/EV/23/2298**

**Mr Gholamali Ghahfarokhi, 13 Tinto Grove, Glasgow G69 7TJ ("the Applicant")**

**Ms Nicola Leonard, 6 Stirling Street, Coatbridge, ML5 5QP ("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, form AT6, Notice to Leave under section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), and section 11 notice served on the local authority.

**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 sent an email to the Applicant on 7 August 2023 in the following terms:

*Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following:*

1. *You have served a notice to leave on the Respondent. That is not appropriate for an assured tenancy. A notice to leave is only appropriate for a private residential tenancy created under The Private Housing (Tenancies) (Scotland) Act 2016.*

2. *The Form AT6 served upon the Respondent includes grounds of eviction taken from the 2016 Act. This is not appropriate for an assured tenancy. The grounds of eviction must be grounds which are set out in the schedule to the Housing (Scotland) Act 1988.*

3. *You have not served a notice to quit upon the Respondent.*

*For the above reasons, the application is unlikely to be accepted. Please confirm that you are withdrawing the application. You may wish to take advice from a solicitor or housing agency before serving the required documentation under the 1988 Act. You should be aware of the following for future applications:*

4. *You must lodge evidence of service and receipt of notices upon the Respondent. Please reply to this office with the necessary information by 21 August 2023. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.*

The Tribunal did not receive a response.

6. The Application is not supported by a valid Notice to Quit, nor a valid Notice of Proceedings as required by section 19 of the 1988 Act. In these circumstances, the Legal Member 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  
11 September 2023