



**DECISION AND STATEMENT OF REASONS BY THE LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY
CHAMBER) WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rule 8 of The First-tier Tribunal for Scotland Housing and Property Chamber
(Procedure) Regulations 2017 (“the Procedural Rules”)

in connection with

19 Hazel Dene, Methil, KY8 2JL

Case Reference: FTS/HPC/EV/20/0189

The Parties:

**Mr Brian Delorey, Wellside House, Kennoway Road, Windygates, KY8 5BX
 (“the Applicant”)**

Mr Christopher Bell, 19 Hazel Dene, Methil, KY8 2JL (“the Respondent”)

1. By application dated 20th January 2020, the Applicant applied to the Tribunal under Rule 109 of the Procedural Rules for an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The following documents were enclosed with the application:
 - (i) Tenancy agreement between the parties dated 19th and 26th June 2019;
 - (ii) Rental account;
 - (iii) Bank statement of Applicant;
 - (iv) Notice to Leave dated 12th December 2019;
 - (v) Section 11 notice to local authority with email dated 20th January 2019;
 - (vi) Letter from Applicant to Respondent dated 17th January 2020
2. By letter dated 29th January 2020, the Applicant was asked to provide proof of service of the Notice to Leave upon the Respondent. The Applicant was also asked to provide written submissions as to why the Notice to Leave, dated 12th December 2019, gave the date 12th December 2019 as the date after which the application would be submitted to the Tribunal.
3. The Applicant responded by email dated 29th January 2020, providing information in relation to service and stating that he had mistakenly inserted the wrong date in the Notice to Leave.

Decision

4. The Legal Member determined to reject the application on the basis that she had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

Reasons for Decision

5. The Legal Member considered the application together with the attachments and subsequent correspondence from the Applicant.
6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court (1988) Env. L.R. 9. At page 15, he states: '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 had to consider in this application in order to determine whether or not the application is frivolous, misconceived and without prospect of success.
7. The Applicant has provided a Notice to Leave that states that an application for an eviction order will not be submitted to the Tribunal before 12/12/19. This is the date of signing of the Notice to Leave and does not comply with the requirements of the 2016 Act. In terms of sections 62(1)(b) and (4) of the 2016 Act, the Applicant ought to have inserted a date falling after the day on which the notice period defined in section 54(2) of the 2016 Act would expire, at which time the Applicant would have been entitled to make an application to the Tribunal.
8. The Notice to Leave is, therefore, invalid, as 12th December 2019 was not the date on which the Applicant would have been entitled to make an application to the Tribunal. Accordingly, the Legal Member determined that the application had no prospect of success and could be held to be futile and misconceived. The Tribunal concluded that the application was frivolous and rejected it under Rule 8(1)(a) of the Procedure Regulations.

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.

**Helen Forbes
Legal Member**

11th February 2020

