



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
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

**56 Chapelle Crescent, Tillicoultry, Clackmannanshire, FK13 6NJ ("the  
property")**

**Case Reference: FTS/HPC/EV/19/0651**

**Richard Watson, Watson Property Services, 43 Alloa Road, Tullibody,  
Clackmannanshire, FK10 2TF ("the Applicant")**

**Julie Stone, 56 Chapelle Crescent, Tillicoultry, Clackmanannshire, FK13 6NJ  
("the Respondent")**

1. By application dated 28 February 2019 the Applicant applied to the Tribunal for an order in terms of Rule 66 of the Rules being an order for possession of the property. The Applicant lodged a copy short assured tenancy agreement dated 10 December 2017, Notice to leave dated 31 January 2019, Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, Sheriff Officer certificate of Service dated 4 February 2019 and copy Section 33, AT5 and AT6 Notices in terms of the Housing (Scotland) Act 1988 ("the 1988 Act") in support of the application.

**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 Legal Member notes that the application lodged with the Tribunal seeks an eviction order in terms of Section 33 of the 1988 Act although the application also makes reference to the application being based on rent arrears and an AT6 Notice is also lodged. The Legal Member notes however that the tenancy between the parties is dated 10 December 2017 and commenced on that date. In terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") a tenancy is a **private residential tenancy** where "(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling". In terms of regulations 1 and 6 of The private Housing (Tenancies) (Scotland) Act 2016 (Commencement No 3, Amendment, Savings Provisions and Revocation) Regulations 2017, Section 1 of the 2016 Act came into force on 1 December 2017. In terms of the said regulations an assured or a short assured tenancy cannot be created after 1 December 2017. It therefore follows that the tenancy agreement between the parties is a private residential tenancy in terms of the 2016 Act and not a short assured tenancy in terms of the 1988 Act. The application is therefore incompetent and cannot proceed.
  
6. The Legal Member proceeded to consider whether the application could be considered in terms of Rule 109 being an application for an eviction order in terms of the 2016 Act. The applicant has lodged with the application a document entitled Notice to Leave dated 31 January 2019 together with a Sheriff Officer certificate of service dated 4 February 2019 which appears to relate to this notice. The Legal Member notes however that the application was received by the Tribunal on 28 February 2019, and as a result the 28 day notice period required by Section 54(2) of the 2016 act has not been met. Furthermore, in Section 52(3) of the 2016 Act states, "An application for an eviction order against a tenant must be accompanied by a copy of the Notice to leave which has been given to the tenant". Section 62 of the Act states (1) references in this part to a notice to leave are to a notice which—(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations." Section 6 of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 states "A notice to leave given by the landlord to the tenant under Section 50(1)(a) ...of the Act must be in the form set out in Schedule 5". The Applicant has not submitted a copy of a Notice to leave as required by the said Act and Regulations. The Notice which has been lodged is not in the prescribed format and furthermore does not identify the date upon which proceedings can be taken against the Respondent. The Applicant has therefore failed to meet the requirements of the Act and as such the Tribunal cannot entertain the application for an eviction order.

7. The Legal member therefore concludes 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.

Josephine Bonnar

Josephine Bonnar  
Legal Member  
15 March 2019