

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

100 East Road, Irvine, Ayrshire, KA12 0AA

Case Reference: FTS/HPC/EV/19/3288

**COLIN MACDONALD, Darnley Cottage, 49 Logan Drive, Troon, Ayrshire KA10 6PN ("the
Applicant")**

JAMES POLLOCK, 100 East Road, Irvine, Ayrshire ML4 KA12 0AA ("the Respondent")

BACKGROUND

1. On 11 October 2019 the Applicant lodged an application for eviction of the Respondent from the property 100 East Road, Irvine, Ayrshire, KA12 0AA ('the property'). The application was made in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was based on ground 12 (rent arrears). In his e-mail to the Tribunal dated 29 November 2019 he enclosed a copy of the notice to leave and a Post Office certificate of posting that stated that the notice to leave had been dispatched to the Respondent on 14 August 2019.

DECISION

2. For the reasons given below this application is rejected.

REASONS FOR DECISION

3. I considered the application in terms of Rule 8 of the 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; . . .

(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."

4. For the purposes of this rule the word 'frivolous' does not have its ordinary day-to-day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.
5. The application was made under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. Section 51 requires the Tribunal to be satisfied that one of the eviction grounds

in schedule 3 to the Act applies.

6. The eviction ground founded on in the application was ground 12. That ground states:

'(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.'

Section 52(2) of the Act states:

'The Tribunal is not to entertain an application for an eviction order if it is made in breach of . . . subsection (3)'

Section 52(3) states:

'An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant'

Section 62(1) states:

'References . . . to a notice to leave are to a notice which . . . (c) states the eviction ground, or grounds on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b).'

In addition part 3 of the notice to leave requires a landlord to state how they believe that the grounds have arisen.

7. Under the tenancy agreement between the parties the Respondent was due to pay the Applicant rent of £525 payable on the fifth day of each month. In his notice of leave the Applicant founded on non-payment of rent due on 5 June, 5 July and 5 August 2019. The notice of leave was dispatched on 14 August 2019 and presumably had been signed on or before that date. As at 14 August 2019 the tenant had not been in rent arrears for three consecutive months. In particular less than one month had passed since the August instalment had become due. Ground 12 had not been satisfied as at 14 August.

8. It follows that the notice to leave was given to the Respondent prematurely. It required the Respondent to leave the property when the Respondent was still entitled to remain there. In these circumstances the notice to leave cannot be valid. This has been affirmed in the recent Upper Tribunal case *Majid v. Gaffney* [2019] U.T. 59 available on

www.scotcourts.gov.uk.

9. In these circumstances I take the view that by making an application to the Tribunal based on an invalid notice to leave the Applicant has breached section 52(3) of the Act. This has the result that the Tribunal cannot entertain the application at all. In those circumstances the current application is misconceived and doomed to fail.

10. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' in its legal meaning for the purposes of rule 8(1)(a) of the Procedural Rules. In addition under rule 8(1)(b) and on the same basis I have good reason to believe that it would not be appropriate to accept this application and send it to a case management discussion for further consideration. The application must therefore be rejected.

What you should do now

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.

D Bartos

David Bartos
Legal Member acting under delegated powers
13 December 2019