



**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 Procedural Rules")**

in connection with

13 Spey Avenue, Paisley ("the property")

Case Reference: FTS/HPC/EV/22/2020

Lauren Fraser, 126 Waverley Crescent, Kirkintilloch ("the Applicant")

Catherine Rooney, 13 Spey Avenue, Paisley ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 109 of the Procedural Rules and Section 51 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). An unsigned private residential tenancy agreement and signed short assured tenancy agreement were lodged with the application.
2. The Tribunal issued a request for further information on 21 September 2022. The Applicant was asked to provide evidence that the Respondent agreed to convert the tenancy to a PRT, as the document lodged was unsigned. No response was received. A further letter was issued on 3 November 2022, directing the Applicant to provide a response or the application may be rejected. The Applicant has not responded.

DECISION

3. 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.

- 4. After consideration of the application and documents lodged 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 Procedural Rules.**

Reasons for Decision

5. '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.
6. The application lodged with the Tribunal seeks an eviction order in terms of Section 51 of the 2016 Act. The Applicant lodged two tenancy agreements with the application. The first is a signed assured tenancy agreement, which started in June 2017. The second is an unsigned PRT. In a covering email, the Applicant explained that the first was the original tenancy agreement between the Respondent and the former owner/landlord of the property. This was superseded by the PRT which was prepared following the Applicant's purchase of the property
7. In terms of Section 75 and schedule 5 of the Private Housing Tenancies (Scotland) Act 2016 no new assured tenancies can be created after the 1 December 2017, when the Act came into force. Tenancies created before that date continued as assured or short assured tenancies unless the landlord and tenant agreed to convert the tenancy to a PRT ("Section 46A of the 1988 Act"). A PRT does not require to be in writing (Section 3 of the 2016 Act). However, in order to establish that the parties agreed to convert the tenancy, the Applicant must provide either a written PRT, signed by both parties, or other evidence that the Respondent agreed to the conversion. The Applicant has provided no evidence to support the claim and has failed to respond to two letters from the Tribunal, directing her to provide this.
8. As the Applicant has failed to provide evidence that the tenancy converted to a PRT, the Legal Member 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
12 December 2022