

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

64 Dalgrain Road, Grangemouth, FK3 8HN

Case Reference: FTS/HPC/EV/18/0041

KJB HOUSING LTD ("the applicant")

DAVID RAE ("the respondent")

1. On 3rd January 2018, an application was received from the applicant via its property agents. The application was made under Rule 109 of the Chamber Procedural Rules being an application by a private landlord for an eviction order in relation to rented property let as a private residential tenancy. The following documents were enclosed with the application:-
 - (a) Private Residential Tenancy Agreement;
 - (b) Copy Notice to Leave;
 - (c) Copy referencing reports; and
 - (d) Copy Section 11 Notice.

DECISION

2. I 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, the attachments and correspondence from the applicant's property agents, I consider 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

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. L.R. 9. At page 16, 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 I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
5. The notice to leave, which is dated 20th December 2017, gives notice in Part 4 thereof that an application will not be submitted to the Tribunal for an eviction order before 18th January 2018. The notice is invalid and ineffectual in respect that it fails to specify the correct day from which the landlord under the tenancy is entitled to make an application for an eviction order to the First-tier Tribunal.
6. Section 62(1)(b) of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") provides that the notice to leave "specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal". Section 62(4) of the Act provides that "the day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire". Section 62(5) of the Act provides that "for the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent".
7. Section 54(1) provides that "a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice". "The relevant period" is defined in subsection (2) as beginning on the day the tenant receives the notice to

leave from the landlord and expires on the day falling 28 days after it begins if subsection 3 applies. In this application subsection 3(b)(ii) applies.

8. Accordingly, it is assumed in terms of the Act that the respondent received the notice on 22nd December 2017 (two days after the notice to leave dated 20th December 2017 was sent). Therefore, the relevant period in terms of the Act expired on the day falling after the day when the 28 day notice period expired, which day is the 20th January 2018. Accordingly, the notice to leave is invalid as it specifies a day two days short of the relevant period of 28 days, and this application has no prospect of success and must be rejected upon the basis that it is frivolous.

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.

N Kinnear

Neil Kinnear
Legal Member
2nd February 2018