

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

17 St Annes Avenue Lasswade EH181DT ("the Property")

Case Reference: FTS/HPC/EV/23/1822

Mr Ian Blair, 7 Glen View Glen Road Meghaberry BT670AP ("the Applicant")

Ms Lindsay McGregor, 17 St Annes Avenue Lasswade EH181DT ("the Respondent")

1. The Applicant initially submitted a form F but sought an eviction order against the Respondent. After some correspondence with the Tribunal, the Applicant submitted an application for an eviction order in terms of Rule 109 of the Rules and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a copy Notice to Leave and Section 11 Notice in support of the application. The Applicant advised that the tenancy started before 1 December 2017, although a copy has not been provided.

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 Tribunal wrote to the Applicant on 9 August 2023 advising that because the tenancy began before 1 December 2017 the Notice to Leave is not valid. The Applicant was advised that an application which relates to an assured tenancy must be submitted with a Notice to Quit and either a section 33 notice or a form

AT6. The Tribunal suggested that the Applicant may wish to withdraw the application and re-submit the application after the relevant notices had been served. The Tribunal also suggested that the Applicant may wish to take legal advice.

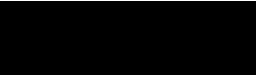
6. The Applicant responded to the Tribunal by email on 22 August 2023. That email contained an attachment which was an incomplete form AT6 dated 22 August 2023. Part 3 of the form AT6 states "I intend to sell the property".
7. The form AT6 is invalid in respect that it was not served before proceedings were raised, is incomplete because it does not provide a period of notice and states a ground of eviction which is not available under the Housing (Scotland) Act 1988.
8. As currently presented, the application is bound to fail. The Notice of proceedings upon which the application is founded is invalid. The Legal Member therefore determines 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.


Legal Member
8 September 2023

