



**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

60 Tollhouse Gardens, Tranent ("the Property")

Case Reference: FTS/HPC/EV/21/2089

Laura Hood, 10 Duncan Gardens, Tranent ("the Applicant")

Dee Hood, 60 Tollhouse Gardens, Tranent ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a copy tenancy agreement in support of the application. The application form states that the Applicant intends to sell the let property.
2. On 10 September 2021, the Tribunal issued a request for further information to the Applicant. The Applicant was directed to provide a copy of the Notice to leave which was given to the Respondent and a copy of the Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003, with evidence that this was sent to the Local Authority. In response, the Applicant provided a document which is headed "Notice to Leave". It states that the Respondent is required to remove from the property by a specified date or an application will be made to the Tribunal for an eviction order. It also indicates that the Landlord intends to sell the let property. The Applicant did not submit a copy of a Section 11 Notice. A further letter was issued, directing the Applicant to provide a copy of the Section 11 Notice and to

explain the basis upon which the Tribunal could entertain the application, as the Notice to leave was not in the prescribed format. The Applicant responded but failed to address the issue of the format of the Notice to Leave or provide a copy of a section 11 Notice.

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 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

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 Applicant has not provided a Notice to Leave in the prescribed format. Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (the 2017 Regulation) sets out the prescribed form for a notice to leave. It states, "6. A notice to leave given by the landlord to the tenant under Section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act **must be in the form set out in Schedule 5.**". The Notice which has been produced is not in the format laid out in the Schedule.
7. The relevant sections of the 2016 Act are as follows:-

52 Applications for eviction orders and consideration of them

...

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) 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.

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) 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,

(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), and

(d) **fulfils any other requirements prescribed by the Scottish Ministers in regulations.**

8. The Legal Member notes that although the Notice given to the Respondent is in writing, specifies the eviction ground and the date upon which the Applicant expects to become entitled to make an application to the Tribunal, it is not in the format prescribed by the 2017 Regulations. As a result, the Notice does not comply with Section 62(d) of the 2016 Act. This means that the Notice which has been produced is not a Notice to leave in terms of the 2016 Act and the Tribunal cannot entertain the application.
9. The Legal Member also notes that the Applicant has failed to provide a copy of a Section 11 Notice which is required by Section 56 of the 2016 Act and Rule 109 of the Rules.
10. As a valid Notice to Leave has not been lodged with the application, and as the Applicant has not complied with the requirements of Rule 109 of the Rules and Section 56 of the 2016 Act, the Legal Member 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.

Josephine Bonnar

Josephine Bonnar
Legal Member
8 November 2021