



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

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

**Chamber Ref: FTS/HPC/EV/22/2229**

**Re: 12 Boyes Path, Glenrothes, KY6 2BA ("the Property")**

**Parties:**

**David Gowans ("the Applicant")**

**Paige McCormick, William Pirie ("the Respondent")**

**Tribunal Member:**

**Ms H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the Tribunal under Rule 109 on 7<sup>th</sup> July 2022, with associated documents.
2. The application was considered by the Tribunal and further information was requested by email dated 3<sup>rd</sup> August 2022, as follows:

It appears from the information submitted that the Respondent had not been in rent arrears for three consecutive months at the date of service of the Notice to leave. The Notice is dated 6 June 2022. The information suggests that the account went into arrears on 1 April. Although three payments may have been missed by 6 June, there had not been 3 consecutive months of arrears. Having regard to the decision of the Upper Tribunal in the case of *Majid v Gaffney 2019 UT 59*, please

explain the basis upon which the Tribunal can entertain this application. (The decision is available on the Upper Tribunal for Scotland website)

If the application is to proceed, please provide the following 1. A copy of the tenancy agreement. 2. Evidence of service of the Notice to leave. 3. Evidence that the section 11 notice was sent to the Local Authority. 4. A rent statement for the whole period of the arrears which shows the rent due, the rent paid the running total outstanding. 5. Evidence of compliance with the Rent Arrears Pre Action Requirements Regulations, if applicable.

3. By email dated 3<sup>rd</sup> August 2022, the Applicant responded as follows:

*Thank you for the update. On reviewing the attached information and the 2019 case provided for my reference, I acknowledge that I based the three consecutive months of arrears on three missed payment dates (1 April, 1 May, 1 June) as opposed to three consecutive and full calendar months. This was a genuine misinterpretation of that clause on my part. Please accept my apologies.*

*In light of this, your Legal Member colleague quite rightly asks the following question, 'please explain the basis upon which the Tribunal can entertain this application.'*

*In answering this question, I would like to advise in the interim period four consecutive months of rent arrears have now accrued, 1 April 2022 to 31 July 2022 inclusive. Whilst a payment of £550 was made by the tenant on 1 August 2022 (comprising £450 rent and £100 towards arrears) an arrears amount of £1,615 remains outstanding as of that date.*

*Unfortunately, to that end, assuming my application now falls within the required criteria of the First-tier Tribunal for Scotland, I wish to proceed. Based on the above, can you advise if my application will still be considered?*

4. By email dated 4<sup>th</sup> August 2022, the Applicant provided the additional information requested.
5. The application was considered by a legal member on 2<sup>nd</sup> September 2022.

### **Reasons for Decision**

6. The Tribunal 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;*

*(c) they have good reason to believe that it would not be appropriate to accept 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."*

7. '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"*.
8. The Notice to Leave in this case specifies a ground for eviction which was not satisfied as at the date of the service, as the Respondent was not, at that time, in three months' arrears of rent. That being the case, the Notice to Leave is invalid and the case must be dismissed.
9. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. The application is accordingly rejected.

## Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

# Helen Forbes

Legal Member/Chair

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2<sup>nd</sup> September 2022  
Date