



**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**

**48 2FR, Union Street, Dundee, DD1 4BE ("the property")**

**Case Reference: FTS/HPC/EV/20/0854**

**Little Headdon Investments Limited, Little Headdon Farm, West Meon,  
Hampshire, GU32 1JY ("the Applicant")**

**Jianhua Liu, 48 2FR Union Street, Dundee, DD1 4BE ("the Respondent")**

1. By application received on 10 March 2020 the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged documents in support of the application including copy private residential tenancy agreement, Notice to Leave dated 9 March 2020 and rent statement. The Notice to Leave states that "an application will not be submitted to the Tribunal for an eviction order before 1 June 2020" being "the earliest date that Tribunal proceedings can start". The eviction ground stated in the application and Notice to leave is ground 12, rent arrears.

**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 supporting documentation from the Applicant, 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**

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 Applicant seeks an eviction order in terms of Section 51(1) of the 2016 Act. The application was submitted to the Tribunal on 10 March 2020. The Applicant has lodged a Notice to Leave which is dated 9 March 2020, being the day before the application was received by the Tribunal. This is in the prescribed form and states that the earliest date upon which a Tribunal application can be submitted is 1 June 2020. Section 54(1) of the Private Housing (Tenancies) (Scotland) Act 2016 states " 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". Section 54(2) provides that the relevant period of notice for an application based on rent arrears is 28 days. The Legal Member notes that, assuming the Notice was given on 9 March 2020, that 28 days' notice has not been given. Furthermore, the application is premature as the earliest date for submitting the application has not passed. The Legal member therefore 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  
28 April 2020