



**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

**29 Hillview, Airdrie ("the property")**

**Case Reference: FTS/HPC/EV/20/1686**

**Thuc Oanh Thi Luong-Mawson, c/o Jewel Homes Ltd, Atrium Business Centre,  
North Coldeen Road, Coatbridge ("the Applicant")**

**Shirley McLaughlan, 29 Hillview, Airdrie ("the Respondent")**

1. By application submitted to the Tribunal by email on 7 August 2020, the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 50 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged documents including a copy private residential tenancy agreement and Notice to Leave in support of the application.
2. A request for further information was issued to the Applicant. One of the matters raised in the request was that the Notice to Leave did not appear to comply with Section 55 of the 2016 Act, as the application had been submitted to the Tribunal more than six months after the date specified in Part 4 of the Notice. The Applicant was also asked to clarify when and how the Notice had been served. In the response the Applicant advised that the Notice had been served by Sheriff Officer and a certificate of service dated 1 October 2020 was provided. The Applicant also stated that the application to the Tribunal had been submitted outwith the 6 month period specified in Section 55 of the 2016

Act as a result of the COVID 19 restrictions. The Applicant advised that the Glasgow Tribunal Centre had closed on 26 March 2020 and that a notice posted on the website said that non time critical and non-urgent applications, “may not be processed until the Glasgow Tribunal Centre has re-opened to SCTS administration, unless a case is made that they are urgent and time critical”. The Applicant further advised that the website indicated on 26 June 2020 that CMDs were resuming and that the application was updated and submitted on 7 August 2020. The Applicant concluded by saying that the application would have been submitted on time had it not been for the closure of the Tribunal office.

## 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 Notice to leave which accompanies the application is dated 26 September 2019. The Notice states that "An application will not be submitted to the Tribunal for an eviction order before 4 November 2019. This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the let property)". 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.

(4) Despite subsection (2)(b) the Tribunal may entertain an application made in breach of Section 54 if the tribunal considers it reasonable to do so.

...

#### **54 Restriction on applying during the notice period**

(1) 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.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

...

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

#### **55 Restriction on applying 6 months after the notice period expires**

(1) 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 more than six months after the day on which the relevant period in relation to that notice has expired.

(2) In subsection (1) “the relevant period” has the meaning given in subsection 54(2)

(3) The reference in subsection (1) to using a copy of the Notice to Leave in making an application means using it to satisfy the requirements of Section 52(3)

#### **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.

...

(4) 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.

7. For the purposes of section 62(1)(d), the relevant regulations are the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, schedule 5 of which sets out the prescribed form for a notice to leave. Part 4 of that form is set out as follows:

**Part 4 THE END OF THE NOTICE PERIOD**

An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that the Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).

8. The Legal Member notes that the Notice to leave was served by Sheriff Officer on 1 October 2020. The Notice specifies 4 November 2019 as the earliest date that an application to the Tribunal can be made. The application was not submitted until 7 August 2020. The Applicant has therefore failed to comply with the requirements of Section 55 of the 2016 Act. In terms of Section 52(2)(b) of the 2016 Act, the Tribunal is not to entertain an application which is made in breach of Section 55.
9. The Applicant argues that the closure of the Tribunal Centre from the end of March until the end of June 2020, is the reason for the late lodging of the application, and therefore the application should be accepted. The Legal Member notes that the Applicant had almost 4 months to submit the application to the Tribunal before the government restrictions were introduced, and it is not clear why the application was not submitted during that period. In any event, the Legal Member is not persuaded by the Applicant's argument for the following reasons:-
- (i) The Coronavirus (Scotland) Act 2020, which introduced changes to the 2016 Act, makes no amendments to Section 55, and
  - (i) The Tribunal website published an update on 19 March 2020 which states that, "Applications will continue to be accepted by the First tier Tribunal for Scotland Housing and Property Chamber (HPC) and processed through the sift process to the point of notification of acceptance of the application (to

the stage of Rule 9 in the HPC Procedural Rules) (these rules are available on the HPC website)) in readiness for fixing a case management discussion (CMD) or hearing. However, as will be appreciated, this plan is dependent on having the ongoing resources to complete these tasks and on Glasgow Tribunal Centre (as the HPC administrative base) remaining open. We would encourage applicants to submit applications electronically and for parties to provide electronic contact details. This reduces the possibility of cross-contamination and is not reliant on the postal service. This will assist if HPC needs to put in place remote working.” And “Any time limits in relation to making an application still apply at present. If the application is not lodged in the prescribed manner, it is held to be made on the date that the HPC receives the last of any outstanding documents necessary to meet the required manner of lodgment (Rule 5(3) HPC Procedure Rules).”

10. The Legal Member is satisfied that the Tribunal does not have discretion to accept an application which does not comply with Section 55 of the 2016 Act. The application is therefore 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

Legal Member  
5 October 2020