



**DECISION AND STATEMENT OF REASONS BY THE 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 Procedural Rules")

in connection with

40 Mossbank, Prestwick, KA9 1DT

Case Reference: FTS/HPC/EV/19/0920

The Parties:-

Mr Adam Harding, 1 Carnell Terrace, Prestwick, KA9 1EA ("the Applicant")

Miss Jennifer King, 40 Mossbank, Prestwick, KA9 1DT ("the Respondents")

1. By application dated 19th March 2019 the Applicant applied to the Tribunal under Rule 109 of the Procedural Rules for an order for recovery of possession of a private residential tenancy. The following documents were enclosed with the application:-
 - (1) Tenancy Agreement between the Applicant and Respondent dated 28th July 2018;
 - (2) Form AT6 Notice under section 19 of the Housing (Scotland) Act 1988 dated 7th February 2019;
 - (3) Notice to Quit dated 7th February 2019;
 - (4) Respondent's signed receipt in respect of (2) and (3) above;
 - (5) Applicant's Bank Statements;
 - (6) Payment Plan; and
 - (7) Notice under section 11 of the Homelessness (Scotland) Act 2003.

2. On 1st April 2019 the Legal Member of the Tribunal with delegated powers

of the Chamber President considered the application paperwork. In particular the Legal Member considered whether there were any grounds to reject the application under Rule 8 of the Procedural Rules.

DECISION

3. The Legal Member determined to reject the application on the basis that she had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

4. In reaching her decision, the Legal Member considered the application together with the attachments provided by the Applicant.
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. 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*". It is that definition which the Legal Member had to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
6. The tenancy between the Applicant and the Respondent is a private residential tenancy under the Private Tenancies (Scotland) Act 2016 ("the 2016 Act"). The relevant provisions of that Act in relation to private residential tenancies came into force on 1st December 2017.
7. Section 52(3) of the 2016 Act provides that an application for an eviction order in relation to a private residential tenancy must be accompanied by a copy of a notice to leave which has been given to the tenant. The concept of the notice to leave was introduced by the 2016 Act and the format is prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Section 52(2) of the 2016 Act is clear that the Tribunal "*cannot entertain an application for an eviction order if it is made in breach of subsection (3)*" therefore the absence of a notice to leave would be fatal to any application under that Act.
8. In this case the Applicant has submitted a Form AT6 Notice under section 19 of the Housing (Scotland) Act 1988. The AT6 Notice is required for recovery of assured tenancies which was the tenancy regime in place prior to 1st December 2017. As the tenancy in this case is a private residential tenancy the provisions of the 1988 Act do not apply. The Respondent should have instead received a notice to leave under the 2016 Act. Having regard to the application paperwork the Legal Member reasonably concluded that no notice to leave under the provisions of the 2016 Act had been served. The receipt signed by the Respondent was clear in that only the Form AT6 and Notice to Quit had been received by her.

9. The Legal Member therefore determined that the application was in breach of the provisions of section 52 (3) of the 2016 Act in that it was not accompanied by a copy of a notice to leave given to the Respondent. As a result and in terms of section 52(2) of the said Act it could not be entertained by the Tribunal and was futile with no prospects of success. Having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Legal Member therefore concluded that the application was frivolous and rejected it under Rule 8(1)(a) of the Procedure Regulations.

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.

Ruth O'Hare
Legal Member