



**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

329 Strathmore Avenue, Dundee, DD3 6RY ("the property")

Case Reference: FTS/HPC/EV/20/0925

Valerie MacLeod, 136 Kingholme Road, Dundee, DD3 6LD ("the Applicant")

Sharon Ross, 329 Strathmore Avenue, Dundee, DD3 6RY ("the Respondent")

1. By application received on 16 March 2020 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 letter to the Respondent, copy rent statement and Notice to the local authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 in support of the application. The letter states "As a member of my family will shortly have to leave his accommodation I have decided to exercise my mandatory rights to give you notice to vacate the flat at 329 Strathmore Avenue, Dundee, in order to make it available for him. I therefore give you the required 28 days from receipt of this letter to end our tenancy agreement on 6 March 2020". The grounds for eviction stated in the application are ground 5 (family member intends to live in the property) and 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 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

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 has not issued a Notice to Leave to the Respondent in the prescribed format. Instead, the Applicant hand delivered a letter to the Respondent on 7 February 2020 advising the Respondent that the tenancy would end on 6 March 2020 and that she wanted to make the property available for her son. 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." Furthermore, the Applicant has not given the required period of Notice to the Respondent. Lastly, one of the eviction grounds upon which the application is based, namely rent arrears, was not referred to in the letter given to the Respondent and was not established at the date on which the letter was issued.
6. The relevant sections of the 2016 Act

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.

...

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,

...

(3) This subsection applies if—...

(a) on the day the tenant receives the Notice to Leave, the tenant has been entitled to occupy the property for not more than six months, ...

(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).

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. The Legal Member notes that the Notice given to the Respondent was in the form of a letter, not the Notice prescribed by the 2017 Regulations. The Applicant has therefore failed to comply with the requirements of Section 52(3) and 62(4) of the 2016 Act and the Tribunal cannot entertain the application.
8. The Legal Member also notes that the Applicant has failed to give the Respondent the required period of Notice, as required by Section 54 of the 2016 Act. The Applicant did not lodge a copy of the tenancy agreement with the application. However, the Section 11 Notice provided states that the tenancy commenced on 2 September 2019. The “Notice” issued to the

Respondent was hand delivered on 7 February 2020, at which date the Respondent would have been entitled to occupy the property for less than 6 months. The Respondent was therefore entitled to 28 days' notice. In terms of section 62(4) of the 2016 Act the Notice must state a date being "**the day falling after the day** on which the notice period defined in section 54(2) will expire." In this case, that date was 7 March 2020. Therefore, in order to comply with section 62(4), the date which ought to have been specified in the notice was 7 March 2020.

9. Lastly, the Legal Member notes that the Applicant seeks to rely on ground 12 as one of two grounds for eviction. This ground is not mentioned in the letter issued to the Respondent. Furthermore, the rent statement lodged with the application shows arrears of rent up to 23 December 2019, which arrears were then settled in full. Further arrears then arise in January 2020 with Notice given to the Respondent on 7 February 2020. Ground 12 of Schedule 3 of the 2016 Act states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months". At the time Notice was given, the Respondent had not been in arrears of rent for three or more consecutive months, and the application could not therefore have been considered in relation to that ground. Had the application otherwise complied with the requirements of the 2016 Act, the application could have been considered only in relation to the other eviction ground referred to in the application.
10. The Legal member therefore determines that, as a valid Notice to Leave has not been served and as the required period of Notice in terms of the 2016 Act has not been given, 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
Legal Member
28 April 2020