

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF ELEANOR MANNION, 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

185D South Street, Perth, PH2 8NY
Case Reference: FTS/HPC/EV/18/0705

Mr. Ian Cadman ("the Applicant")

Miss. Emma Holmes and Mr. Vikrant Deveun("the Respondents")

1. On 26 March 2018 an application was received from the Applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a short assured tenancy. Attachments were provided with the application form to support the application. These attachments included a Notice to Quit, an AT6 Notice, a Section 11 Notice, a lease and an AT5 Notice. A Rent statement to the 22nd March 2018 and extract bank statements were also attached.
2. In terms of the lease, the landlord is noted as Mr. Ian Cadman. He is making the application on his own behalf. The Respondents are noted as the tenants.
3. In part 5 of the application, the Applicant sets out the grounds for possession, namely Grounds 8 and Ground 11 under Part 2 Schedule 5 of the Housing Scotland Act 1988.

DECISION

4. 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."

The Legal Member also considered the wording of Ground 8 Part 2 Schedule 5 of the Housing (Scotland) Act (1988) which states as follows:

Ground 8

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears.

- 5. After consideration of the application and the attachments, 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

6. '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, as it is misconceived and has no prospect of success.
7. The lease lodged by the Applicant sets out that the monthly rent is set at £460. The rent account provided by the Applicant outlined those payments made and/or due from December 2017 to 22nd March 2018. This rent account was lodged with the application Form E. The Application was also accompanied by the AT6 notice and Notice to Quit, both of which are dated 22rd March 2018. At the time of service these notices, the rent was in arrears to the amount of £1,130. Three months' rent under the terms of this lease is £1,380.
8. Ground 8 requires that **both** at the date of serving the appropriate notices as per Section 19

of the Housing (Scotland) Act 1988, in this case the AT6 notice and the Notice to Quit, **and** at the date of the hearing “*at least three months rent lawfully due from the tenant is in arrears*”.

9. At the date the notices were served, the arrears set out as accrued did not amount to at least three months’ rent. Rule 8 of the Chamber Procedural Rules does not allow for the rejection of an application in part. The application as a whole is therefore misconceived and frivolous.

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.

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Miss Eleanor Mannion
Legal Member
18 April 2018