



**DECISION AND STATEMENT OF REASONS OF FIONA WATSON, 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

199F Victoria Road, Aberdeen, AB11 9NE

Case Reference: FTS/HPC/EV/19/3729

Ms Lynsey Clark, 6/7 North Hillhouse Field, Edinburgh, EH6 4HU ("the applicant")

Mr Andrew O'Neil Lewis, 199F Victoria Road, Aberdeen, AB11 9NE ("the respondent")

1. On 20 November 2019, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules being an application for repossession of a Private Residential Tenancy. The following documents were enclosed with the application:-
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Copy s11 notification to Local Authority
 - (iv) Rent statement
 - (v) Print out from Royal Mail Track and Trace service showing item "returned to

sender”

By letter dated 11 December 2019, the Tribunal requested further information from the applicant. Specifically, the Tribunal requested evidence that the Notice to Leave had been served on the tenant. Further, the Tribunal requested a current address for the respondent, failing which, details of steps taken by the applicant to locate the respondent and a completed application for service by advertisement. A deadline of 25 December 2019 was given for provision of this information. The applicant has failed to respond to this request. A further letter was sent to the applicant on 31 December 2019 giving a further opportunity to provide said information by 14 January 2020. The applicant has failed to respond to this request.

DECISION

2. I considered the application in terms of Rule 8 of the 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, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

4. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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 I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
5. The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to

respond to the Tribunal's enquiries in order to progress this application.

6. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.

F Watson

Fiona Watson
Legal Member
4 February 2020