



**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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**

**56 Manse View, Newarthill, ML1 5TB**

**Case Reference: FTS/HPC/CV/20/0097**

**Mr Jeremy Finn, c/o Independent MPS, 23 Stirling St, Airdrie, ML6 0AH, ("the  
Applicant")**

**Mr George Jack, 56 Manse View, Newarthill, ML1 5TB ("the Respondent")**

1. By application dated 10<sup>th</sup> January 2020 the Applicant seeks an order for eviction under Rule 109 of the Tribunal's Procedural Rules.
2. Documents lodged in connection with the application include a copy tenancy agreement, rent statement, Notice to Leave, email regarding service of Notice To Leave and Section 11 Notice.
3. The application seeks eviction on the grounds of 3 months' rent arrears. No ground number is given. However, the Notice To leave does not mention the ground relative to three months' rent arrears. A ground for eviction cannot be relied upon if it has not been included in the Notice to Leave.
4. The Notice to Leave cites the ground "You have breached a term of your tenancy agreement", which is ground 11 in terms of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016. Part 3 of the Notice to Leave goes on to mention rent arrears as the ground of eviction. No details are given in relation to any alleged breach of the tenancy agreement.

Ground 11 states as follows:

*“Breach of tenancy agreement*

*11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the tenant has failed to comply with a term of the tenancy, and*

*(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*

*(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”*

Paragraph 11(3) makes it clear that rent arrears do not constitute a breach of the tenancy agreement in relation to this ground.

5. The Notice To Leave has been emailed to the respondent on 2nd December 2019. The Notice to leave states that “An application will not be submitted to the Tribunal for an eviction order before 31st December 2019.” In terms of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010, a document is not considered to be served until 48 hours after it is sent unless the contrary is shown. Insufficient notice has been given to the Respondent.

## **DECISION**

6. 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."*

7. After consideration of the application, the supporting documentation and correspondence from the Applicant, 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**

8. '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.

9. The Application is rejected on the basis that firstly, an incorrect ground has been used on the application form, secondly, an incorrect ground has been used on the Notice To leave, and thirdly that the Notice To leave has not been served in such a way as to give sufficient notice to the respondent.

### **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.

# A. Kelly

Alison J Kelly  
Legal Member  
3<sup>rd</sup> February 2020

