



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

31 Berryhill Crescent, Wishaw ML2 ONE ("the property")

Case Reference: FTS/HPC/CV/22/3163

**Audrey Buggy and John Neill, 98 Wishaw Road, Wishaw ML2 8EA ("the
Applicant")**

**Independent Estates, 97 Main Street, Wishaw ML2 7AU ("Applicant's
Representative")**

Kelly, Nicholson, 31 Berryhill Crescent, Wishaw ML2 ONE ("the Respondent")

1. The Applicant seeks an order for payment of £4545 in respect of rent arrears in terms of Rule 111 of the Rules and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). A copy of a private residential tenancy agreement and a bank statement were lodged in support of the application.
2. The Tribunal issued a request for further information on 6 October 2022 to the Applicant's Representative, directing the Applicant to (a) clarify why the name of the First Applicant was Audrey Buggy but on the tenancy agreement and the related eviction application the name was Audrey Neill; (b) provide a rent statement showing the rent due each month, payments made and the running balance; and (c) state whether the Applicant was content for the un-redacted bank statement to be crossed to the Respondent or whether they wished to

withdraw the bank statement or provide a redacted copy. No response was received. An email was sent to the Applicant's Representative on 16 November 2022 asking for the information requested to be provided within 14 days. No reply was received.

DECISION

3. 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.

- 4. After consideration of the application and documents lodged 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 Procedural Rules.

Reasons for Decision

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 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.
6. The Applicant seeks an order for payment in respect of rent arrears. The Applicant has failed to explain the entitlement of Audrey Buggy to proceed with the application. The only vouching provided in support of the claim for payment is an unredacted bank statement. The applicant has failed to confirm whether they are content for the unredacted document to be crossed to the Respondent. No other vouching has been provided showing the breakdown of the sum claimed. In these circumstances, the Legal Member determines that 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.

Joan Devine

Joan Devine
Legal Member
20 December 2022