



**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 Procedural Rules")**

in connection with

1 C Thorn Brae, Johnstone, PA5 8HF

Case Reference: FTS/HPC/CV/20/1128

Najma Mohammed, 199-201 Maryhill Road Glasgow ("the Applicant")

**Premier Serviced Properties Ltd, 13 Carrington Street Glasgow ("the
Respondent")**

1. By application received on 30 April 2020 the Applicant seeks a payment order against the Respondent in terms of Rule 111 of the Procedural Rules, being an application for Civil Proceedings in relation to a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant lodged a copy private residential tenancy agreement and rent statement in support of the application.

DECISION

2. The Legal Member 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, the Legal Member determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a).

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 jurisdiction of the Tribunal in civil matters arising out of the 2016 Act is set out in section 71 which states "(1) In relation to civil proceedings arising from a private residential tenancy – (a) the First-tier tribunal has whatever competence or jurisdiction a Sheriff would have but for paragraph (b), (b) a sheriff does not have competence or jurisdiction. (2) For the purposes of subsection (1), civil proceedings are any proceedings other than – (a) the prosecution of a criminal offence, (b) any proceedings related to such a prosecution."
6. Section 1 of the 2016 Act provides a definition of "private residential tenancy" for the purposes of the 2016 Act. This states "(1) A tenancy is a private residential tenancy where - (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling, (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy."
7. The tenancy agreement submitted with the application is described as a private residential tenancy which started on 5 October 2018. As such, the Tribunal's jurisdiction to deal with the application arises from Section 71 of the 2016 Act. However, the Respondent is a limited company, not an individual. Furthermore, the Respondent has not occupied the property as its principal home. It appears

that the agreement between the parties is a commercial lease. As a result the tenancy is not a private residential tenancy within the meaning of the 2016 Act and the Tribunal does not have jurisdiction to deal with the application.

8. The Legal member determines that as the Tribunal does not have jurisdiction to deal with the application, 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
25 May 2020**