



**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 Rules")**

in connection with

**Flat 1, 6 Station Road, Dumbarton ("the Property")**

**Case Reference: FTS/HPC/EV/20/2155**

**Aniko Smith, c/o Lomond Letting Ltd, 68 East Clyde Street, Helensburgh ("the  
Applicant")**

**Martin Carrigan, Flat 1, 6 Station Road, Dumbarton ("the Respondent")**

1. By application received on 12 October 2020 the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a private residential tenancy agreement and Notice to Leave in support of the application. The Notice to Leave is dated 26 February 2020. The date specified in Part 4 of the Notice, as the earliest date an application can be made to the Tribunal, is 23 May 2020. The Notice to leave states that an application for an eviction order is to be sought on ground 11, breach of tenancy. The application form states that an eviction order is sought due to arrears of rent.
2. On 6 November 2020, the Tribunal issued a request for further information to the Applicant. The Applicant was asked to clarify the eviction ground. She was advised that ground 11 could not be used for rent arrears and that a Notice to

Leave would be required for ground 12, if the application was to proceed on that ground. The Applicant failed to respond and a further letter was issued on 3 December 2020, notifying the Applicant that a response was required. The Applicant's agent sent a response. This indicated that the application was supposed to be proceeding on grounds of rent arrears although indicated that the Respondent had not been in arrears for three months. A further letter was issued to the Applicant which indicated that if the Notice to Leave had been served on the wrong ground, the application would require to be withdrawn and re-submitted once a new notice to leave on the correct ground had been served on the Respondent. The Applicant was asked to confirm if she wished to do that or if there was another breach of tenancy upon which the application could proceed. No response was received. A further letter was issued to the Applicant on 3 February 2021, directing the Applicant to provide a response or the application may be rejected. No response has been 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 the documents submitted by the Applicant 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 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. Part 3 of the Notice to Leave which accompanies the application states that an application for an eviction order is to be sought on ground 11. Ground 11 of Schedule 3 of the 2016 Act states, "(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." However, sub-paragraph (3) states, "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." It follows that a landlord cannot rely on ground 11 where the application is based

on rent arrears and must instead proceed in terms of ground 12. The application and the response to a further information request suggests that the only breach of tenancy has been a failure to pay rent. No information or evidence has been provided in relation to any other breach of tenancy. The Legal Member is therefore satisfied that the Notice to Leave has been served on the wrong ground and that the Tribunal cannot entertain the application for an eviction order in relation to ground 11.

7. Section 52(3) of the 2016 Act states, “An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant. Section 62 of the 2016 Act is as follows -

**62 Meaning of notice to leave and stated eviction ground**

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

8. The Applicant has failed to comply with Sections 52(3) and 62(c) of the 2016 Act as the application lodged was not accompanied by a copy of a Notice to Leave which complies with Section 62(c). This is because the eviction ground specified in the Notice is not the ground upon which the landlord proposes to seek an eviction order. The application indicates that the order is sought due to arrears of rent. The relevant ground is ground 12 and not ground 11. The Applicant has therefore failed to comply with the requirements of the 2016 Act.
9. As the Applicant lodged a Notice to Leave which specifies the wrong eviction ground and has failed to comply with Sections 52(3) and 62 of the 2016 Act, 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.

**Josephine Bonnar**

Josephine Bonnar  
Legal Member  
9 March 2021