



**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

14 Riverside Gardens, Cronberry

Case Reference: FTS/HPC/CV/20/2630

Alan Reid, 1/5 Russell Gardens, Edinburgh ("the Applicant")

Jane Benn, 14 Riverside Gardens, Cronberry ("the Respondent")

1. By application received on 21 December 2020, the Applicant seeks an order for possession in terms of Rule 65 of the Procedure Rules and Section 18 Housing (Scotland) Act 1988 ("the 1988 Act").
2. On various occasions between 21 December 2020 and 29 March 2021, the Tribunal issued requests for further information to the Applicant. The Applicant had failed to provide a copy tenancy agreement. He initially indicated that there was no written agreement. He subsequently advised, that there is no tenancy, no start date or term and no rent is being paid. The Applicant stated that the Respondent is occupying the property illegally. The Tribunal issued a further

letter asking the Applicant to clarify the position regarding jurisdiction, as it did not appear that the respondent's occupation of the property came within the Tribunal's jurisdiction. The Applicant initially responded to seek advice regarding the matter and then failed to respond to further correspondence.

DECISION

3. 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."

4. 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

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. In terms of Section 16 of the Housing (Scotland) Act 2014 the functions and jurisdiction of the Sheriff in relation to tenancies under the Rent (Scotland) Act 1984 and Housing (Scotland) Act 1988 were transferred to the Tribunal. The Tribunal's jurisdiction in relation to private residential tenancies arises from the Private Housing (Tenancies) (Scotland) Act 2016. These are the only tenancies over which the Tribunal has jurisdiction to deal with applications for eviction or possession.
7. The Legal Member notes that the Applicant has stated that there is no tenancy in relation to the property and that the Respondent is in occupation of the property illegally and does not pay rent. The Applicant has provided no further information. As the Applicant has indicated that he did not agree to let the property to the

Respondent, it appears that the Respondent's occupation of the property is not an assured tenancy under the 1988 Act, a private residential tenancy under the 2016 Act or a tenancy under the 1984 Act . As a result, 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

**Josephine Bonnar
Legal Member
22 April 2021**