

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

25 Waggon Road, Ayr, KA8 8BA ("the Property")

Case Reference: FTS/HPC/EV/23/2233

Mrs Evelyn Easton, Mr James Easton, 18 Whiteford View, Ayr, KA7 3LL ("the Applicants")

Miss Claire Smith, 25 Waggon Road, Ayr, KA8 8BA ("the Respondent")

1. The Applicants submitted an application for an eviction order in terms of Rule 109 of the Rules and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). In support of the application, the Applicants lodged a copy of the notice to leave, rent statement, photographs of the property and copy email correspondence.

DECISION

2. 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.

- 3. 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

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 Tribunal sent an email to the Applicants on 6 July 2023 requesting further information to allow the application to be considered. The Tribunal advised that a response was required by 13 July 2023, otherwise the President may decide to reject the application. The Applicants responded by email on 6 July 2023 providing some of the requested information.

6. The Tribunal sent a further email to the Applicants on 1 August 2023, advising that the notice to leave appeared to have expired. The notice to leave had been served on 12 October 2022 and the period of notice expired on 11 November 2022. The present application was made on 5 July 2023.
7. The Applicants responded by email and attached a notice to leave which was served on 9 August 2023 and does not expire until 3 November 2023.
8. Section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 provides:-
 - (1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.*
 - (2) *In subsection (1), “the relevant period” has the meaning given in section 54(2).*
 - (3) *The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3)*
9. Section 54 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 provides:-

A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.
10. Having regard to the terms of section 55 of the 2016 Act, the notice to leave lodged in support of the present application has expired, the period of notice having expired more than 6 months before the present application was made. This application therefore has no prospects of success.
11. Having regard to section 54(1) of the 2016 Act, the new notice to leave which was served on 9 August 2023 cannot support the present application because the period of notice has not yet expired.
12. For the reasons set out above, the Legal Member therefore 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.

Nicola Irvine

Nicola Irvine
Legal Member
4 September 2023