

**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

**113 Hamilton Road, Motherwell, ML1 3DG ("the Property")**

**Case Reference: FTS/HPC/CV/23/0766**

**Mr John McConville, Suite 5, 56-68 Stirling Street, Airdrie, ML6 0AS ("the Applicant")**

**Mr Tobiasz Zuchewicz, ("the Respondent")**

1. The Applicant submitted an application in terms of Rule 111 of the Rules and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). In support of the application, the Applicant submitted a copy of the tenancy agreement and rent statements.

**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 wrote to the Applicant's representative on 31 March 2023 requesting further information as follows:-
1. A mandate from the Applicant authorising the representative to act
  2. An amended application to include the Respondent's details and to remove reference to eviction.
  3. A rent statement for the full sum sought.

The Tribunal advised that a response was required by 14 April 2023, otherwise

the President may decide to reject the application.

The Applicant's representative responded by email on 13 April 2023 providing a copy Notice to Leave but did not provide all of the requested information.

6. The Tribunal wrote to the Applicant's representative on 16 May 2023 requesting the following information:-

1. The Respondent's name and address
2. Confirmation of whether the Applicant wished to withdraw the Notice to Leave, as it is not required for this application.
3. Clarification of whether the Applicant wished to amend the sum sued for.

The Applicant's representative responded by email on 16 May 2023 but did not provide a response to points 1 or 3 and advised that the Notice to Leave was not to be withdrawn.

7. The Tribunal wrote to the Applicant's representative on 19 June 2023 requesting the following information:-

1. Completion of the Respondent's name and address on form F.
2. Confirmation of the exact amount the Applicant sought an order for.
3. A residential address for the Applicant.

The Applicant's representative responded by email on 21 June, providing the Respondent's name, a rent statement and a different address for the Applicant.

8. The Tribunal wrote to the Applicant's representative on 25 July 2023 asking for the following:-

1. Clarification as to whether the address provided for the Applicant a home address, as it appears to be an office address.
2. The address of the Respondent.

The Applicant's representative responded by email of 25 July 2023. No clarification was given in relation to point 1 and the Tribunal was advised that the Respondent lives at the property address.

9. The Tribunal wrote to the Applicant's representative on 25 August 2023 asking for an amended form F to be submitted and advising that a residential address is required for the Applicant. The Applicant's representative responded by email on 29 August 2023. An amended application was not provided and there was still

no clarification of the Applicant's residential address.

10. Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") sets out the requirements of making an application. In terms of that Rule, the Chamber President or another member with delegated powers of the Chamber President may request further documents. The Rule provides that an application is not accepted where the outstanding documents requested are not received within a reasonable period.
11. Rule 111 requires the application to state the name and address of the applicant, the name and address of the other party and the reason for making the application. The application must be accompanied by evidence to support the application, a copy of any relevant document and must be signed and dated.
12. The application was submitted on 9 March 2023. The application form was deficient and did not meet the requirements of Rule 111. The Tribunal corresponded with the Applicant's representative from 31 March 2023 to 29 August 2023 and the requirements of Rule 111 have still not been met. The Applicant has been given many opportunities to provide the information required and has failed to do so. 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  
Legal Member  
15 September 2023