



**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

24 Greenfield Quadrant, Newarthill, Motherwell, ML1 5TF ("the property")

Case Reference: FTS/HPC/EV/20/0096

**AMPG Ltd T/A Ahuja Holdings, U1 South Fens Business Centre, Fenton Way,
Chetteris, Cambridgeshire, PE16 6TT ("the Applicant")**

**Iwona Seredynska, Ryszard Seradynski 24 Greenfield Quadrant, Newarthill,
Motherwell, ML1 5TF ("the Respondent")**

1. By application received on 14 January 2020 the Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A copy tenancy agreement, Notice to Quit and AT6 were lodged in support of the application. The tenancy agreement states that rent is due at the rate of £219 per month. The AT6 Notice indicates that recovery of possession of the property is sought on ground 8 of Schedule 5 of the 1988 Act. On 31 January 2020 the Tribunal issued a request for further information in terms of Rule 5(3) of the Rules. The Applicant was asked to clarify its entitlement to make the application as the property is owned by a third party; to confirm whether they intended to proceed under Rule 66 instead as a Section 33 Notice had been lodged; to confirm that the evidence produced regarding service related to all of the Notices lodged; and to confirm (if the application was to proceed in terms of Rule 65) that ground 8 had been established a the date of service of the AT6 as the rent statement lodged

indicated otherwise. The Applicant failed to respond. On 28 February 2020 a further letter was issued to the Applicant advising that a response was required to the letter of 31 January 2020 or the application may be rejected. No response was received. On 23 April 2020 the Tribunal issued a further letter to the Applicant directing him to respond to the previous requests for information by 14 May 2020, or the application may be rejected. No response was received.

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, the supporting documentation and correspondence from the Applicant, 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 Procedural 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. Rule 5(c) of the Rules stipulates that , “If it is determined that an application has not been lodged in the prescribed manner”, the Tribunal may make a request for further documents to be lodged.” The Applicant has been issued with letters requesting further information and documentation on three occasions. The Applicant has failed to respond and has not provided the information required by the Tribunal.
6. Rule 65 of the Rules requires an application to be accompanied by “(b)(iv) evidence as the applicant has that the possession ground or grounds has been met”. The application seeks an order for possession of the property on ground 8 of Schedule 5 of the 1988 Act. This states, “Both at the date of service of the notice under Section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent arrears lawfully due from the tenant is in arrears”. The tenancy agreement indicates that rent is due at the rate of £219 per month. The rent statement lodged in support of the application indicates that on 5 September 2019, when the Applicant says the AT6 Notice was served, the Respondent owed £598, being less than three months arrears. It therefore appears that the ground for possession has not been established and the Applicant has failed to provide the necessary evidence, as required by Rule 65.
7. In the absence of evidence which establishes that the ground for possession

has been met, and as the Applicant has failed to respond to letters from the Tribunal directing the Applicant to provide further information and documentation, 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 July 2020