

**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

Fangorn Farm, Mulben, Banffshire, AB55 6YX ("the Property")

Case Reference: FTS/HPC/EV/22/1764

**Mrs Frances Anna Petra Davies-Oerlemans, The Stables, Mulben ("the
Applicant")**

**Mr Michael Robinson, Fangorn Farm, Mulben, Banffshire, AB55 6YX ("the
Respondent")**

1. 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"). In support of the application, the Applicant lodged a copy of a letter from the Respondent dated 20 March 2022. On 10 June 2022 the Tribunal requested evidence that the eviction ground had been met, a copy of the Notice to Leave and a copy of the notice to the local authority as required in terms of section 56(1) of the 2016 Act. The Applicant was asked to provide this information by 17 June 2022 and was advised that otherwise, the application may be rejected. No response was received. The Tribunal wrote to the Applicant on 7 July 2022 reiterating the request for further information and requesting clarification of whether the Applicant is registered on the Scottish Register of Landlords. The Applicant was asked to respond by 21 July 2022 and was advised that if no response was received, the application may be rejected. No response was received. The Tribunal issued a further letter to the Applicant on 26 August 2022, enclosing copies of earlier correspondence and requesting a response by 2 September 2022. The Applicant was advised that if no response was received, it was likely that the application would 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 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 requested the following information:-
 - A copy of the Notice to Leave served on the Respondent together with evidence of service
 - A copy of the Notice served on the local authority, together with evidence of service
 - Evidence to support the ground of eviction
 - Clarification of whether the Applicant was registered on the Scottish Register of Landlords

Despite 3 requests, the Applicant failed to respond to the Tribunal.

The Applicant has failed to co-operate with the Tribunal. In the absence of the information requested, the application cannot succeed. The Applicant was advised by the Tribunal that failure to provide the information may result in the application being rejected. The Tribunal therefore cannot entertain the application.

6. 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

24 October 2022