

**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

**3 Bunbank Grove, Straiton, Lonahead, EH20 9NX ("the Property")**

**Case Reference: FTS/HPC/EV/22/1587**

**Mrs Zarrin Mushtaq, 34 Foxhill Crescent, Leeds, LS16 5PD ("the Applicant")**

**Mr Michael Patterson, 3 Burnbank Grove, Straiton, Loanhead, EH20 9NX & Kylie  
Howard, 3 Burnbank Grove, Straiton, Loanhead, EH20 9NX ("the Respondents")**

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 the tenancy agreement, a rent statement a section 11 notice and a copy of the Notice to Leave date 21/09/2021. On 13 June 2022 the Tribunal requested evidence of service of the Notice to Leave and section 11 notice. On 13 June 2022, the Applicant's representative produced evidence of service of the section 11 notice. In respect of the Notice to Leave, the Applicant's representative produced a screenshot of an exchange of messages between 2 unidentified persons. One of the messages states "Need call back today, had an eviction letter". There is no mention of the Notice to Leave and the identity of the individuals involved in the exchange of messages is unknown. The Tribunal wrote to the Applicant's representative on 6 July 2022 requesting details of how and when the Notice to Leave was served and requesting proof of service. The Tribunal asked for that information to be provided by 20 July 2022. No response was received. The Tribunal issued a reminder for further information on 25 August 2022 requesting the information by 1 September 2022, advising that if no response was received, the application may be rejected. No response has been received by the Tribunal.

## 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:-
  - evidence of service of the Notice to Leave on the Respondent

Despite 2 requests, the Applicant's representative 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