



**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 Procedural Rules")**

**in connection with**

**Flat 1F3, 73 Lothian Road, Edinburgh**

**Case Reference: FTS/HPC/CV/20/2387**

**Louise Howie, Flat 1F3, 73 Lothian Road, Edinburgh ("the Applicant")**

**David Allan, 21 Victoria Gardens, Donaghadee ("the Respondent")**

1. The Applicant seeks a payment order in relation to unpaid rent in terms of Rule 111 of the Procedural Rules and Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a copy tenancy agreement in support of the application. The agreement states that the tenancy will commence on a date to be mutually agreed prior to the end of the academic year in 2019 and that it relates to a furnished room.
2. In response to various requests for further information the Applicant firstly confirmed that the tenancy was a private residential tenancy in relation to a furnished room with shared facilities. The Applicant then advised the Tribunal that the property is the Applicant's primary residence and that the Respondent rented a room from her, with access to the shared elements of the property.

## DECISION

3. The Legal Member considered the application in terms of Rule 8 of the 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."*

4. After consideration of the application, the attachments and correspondence from

the Applicant, the Legal Member determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a).

## REASONS FOR DECISION

5. '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.
6. In terms of Section 16 of the Housing (Scotland) Act 2014, the Tribunal has jurisdiction to deal with civil matters arising out of regulated tenancies and Part vii contracts under the Rent (Scotland) Act 1984 and assured tenancies under the Housing (Scotland) Act 1988. As the tenancy in question commenced at some point in 2019, it does not fall under these provisions. The Applicant claims that the tenancy is a private residential tenancy under the 2016 Act
7. The jurisdiction of the Tribunal in civil matters arising out of the 2016 Act is set out in section 71 which states "(1) In relation to civil proceedings arising from a private residential tenancy – (a) the First-tier tribunal has whatever competence or jurisdiction a Sheriff would have but for paragraph (b), (b) a sheriff does not have competence or jurisdiction. (2) For the purposes of subsection (1), civil proceedings are any proceedings other than – (a) the prosecution of a criminal offence, (b) any proceedings related to such a prosecution."
8. Section 1 of the 2016 Act provides a definition of "private residential tenancy" for the purposes of the 2016 Act. This states "(1) A tenancy is a private residential tenancy where - (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling, (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and (c) the tenancy is not one

which schedule 1 states cannot be a private residential tenancy.” In terms of Paragraphs 7 and 8 of Schedule 1 (Resident Landlord), a tenancy cannot be a private residential tenancy if “(b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who – (i) has the interest of the landlord under the tenancy, and (ii) has a right to use the shared accommodation in the course of occupying that person’s home”. As the Applicant was a resident landlord, the tenancy between the parties was not a private residential tenancy in terms of the 2016 Act.

9. As the Tribunal does not have jurisdiction to deal with the application in terms of Section 16 of the 2014 Act, or Section 71 of the 2016 Act, 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  
3 February 2021**