

**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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 Alexander Street, Dysart, Kirkcaldy, ("the Property")**

**Case Reference: FTS/HPC/EV/22/1651**

**Marri Welsh ("the Applicant")**

**Beate Rippka ("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"). The Applicant lodged a tenancy agreement and Notice to Leave in support of the application.
2. The Tribunal wrote to the Applicant's Representative on 14<sup>th</sup> June 2022 seeking further information and documentation including written authority to act, a copy of the landlord registration, a copy of the Tenancy Agreement, evidence of service of the Notice to Leave, correct section 11 Notice with proof of service, confirmation that the Application should run in the names of both title holders and evidence to satisfy ground 1 of Schedule 3 of the Act. A reply was requested by 28<sup>th</sup> June 2022.
3. No information was received and a reminder letter was sent by the Tribunal on 22<sup>nd</sup> July 2022, asking for the information by 5<sup>th</sup> August 2022.
4. An email was received from the Applicant's representative on 22<sup>nd</sup> July 2022 saying that the information was being collated and would be provided.
5. As at today's date, 5<sup>th</sup> September 2022, the information has not been provided. No further response has been received from the Applicant or the Representative.

## DECISION

6. 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.*

- 7. 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

8. '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.
9. The Applicant has not provided the information required to allow the Application to proceed. 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.



Alison Kelly  
Legal Member  
5 September 2022