



**Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/20/1211**

**Re: Property at 121 Clydesdale Avenue, Hamilton, ML3 7SU (“the Property”)**

**Parties:**

**Mrs Anna Piszczek, 34 Duarte Place, Grays, RM16 6PH (“the Applicant”)**

**Mr Alan Barrett, 121 Clydesdale Avenue, Hamilton, ML3 7SU (“the Respondent”)**

1. On 27 May 2020 an application was received from the Applicant. The application was made under Rule 109 of the Chamber Procedural Rules being an application by a private landlord for eviction of a tenant from a private residential tenancy.
2. After further procedure the following documents were enclosed with the application:-
  - (i) Lease Agreement;
  - (ii) Notice to Leave;
  - (iii) Copy of Rental Account; and
  - (iv) Notice to Local Authority section 11 Notice.

**DECISION**

3. I considered the application 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.”

4. After consideration of the application and attachments from the Applicant, I consider 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**

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. L.R. at page 16, he states: - *“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 I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.
6. The notice to leave is dated 31 February 2020. It provides in Part 2 the reasons for seeking eviction, namely ground 12 that *“You are in rent arrears over three consecutive months”*. Part 3 sets out the evidence relied upon by the Applicant to establish ground 12. The notice states that:-

*“You are in rent arrears over three consecutive months for the rental periods of*

01.03.2020-21.03.2020

01.02.2020-29.02.2020

01.01.2020-31.01.2020”

7. I consider therefore that the notice is invalid, in respect that at the date it was signed, the tenant had not been in rent arrears for three or more consecutive months.
8. Section 62 (1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) provides that a notice to leave “*specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-Tier Tribunal.*

Section 62 (1) (c) of the 2016 Act provides that the notice to leave “*states the eviction ground, ..., on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property...*”.

The eviction ground in this application is ground 12 rent arrears. This ground is set out in Part 3 Schedule 3 of the 2016 Act. It provides that “*It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*”

9. The Upper Tribunal case of *Majid v Gaffney and Britton, UTS/AP/19/0037* considered this situation. In that case the notice to leave had been served before the tenant had been in rent arrears for three or more consecutive months. The Notice to Leave was dated 1 July 2019 and the notice stated that “*You are in rent arrears of £1525 from rent due 30/4/19, 31/5/19 and 30/6/19.*” The Upper Tribunal held that “*... if the tenant was first in arrears of rent as at 30 April 2019 then the expiry of the three month period would be 30 July 2019. As at 1 July 2019 the tenant was not in rent arrears for three or more consecutive months. The tenant must have been in arrears for the specified period of time, not simply owing rent.*” They found that the notice to be invalid, stating at Paragraph 14 “*... the word “expects” relates to the date on which the application will be made. ... The statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not it is invalid. If it is invalid decree for eviction should not be granted. ... Either the ground exists at the time when the Notice to Leave is served or it does not. If it does not the Notice to Leave is invalid and it cannot be founded on as a basis for overcoming the security of tenure that the 2016 Act.*”

10. In this application, the notice to leave was dated 31 February 2020 and Part 3 of the notice shows that as at 31 February 2020 the tenant had not been in rent arrears for three or more consecutive months. Accordingly, the notice is invalid and does not meet the terms of the statutory requirements. This application has therefore no prospect of success and must be rejected upon the basis that it is frivolous.

### **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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

**Legal Member/Chair**

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**2 July 2020**