



**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/20/2101**

**Re: Property at 14 Vorlich Crescent, Callander, FK17 8JE (“the Property”)**

**Parties:**

**Mr Andrew Bowie, 2 Lendrick Avenue, Callander, FK18 8LZ (“the Applicant”)**

**Ms Myra Kyle, 14 Vorlich Crescent, Callander, FK17 8JE (“the Respondent”)**

1. On 2 October 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) A letter purporting to be a Notice to Leave; and
  - (iii) 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. Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 sets out statutory requirements for applications for eviction and consideration of them and subsection (3) provides that :-

*“(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.”*

7. Section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 sets out the “meaning of notice to leave and stated eviction ground”. Subsection 1 providing that,

*“(1)References in this Part to a notice to leave are to a notice which—  
(a) Is in writing,  
(b) 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,  
(c)states the eviction ground, or grounds, 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 before the end of the day specified in accordance with paragraph (b), and  
(d) Fulfils any other requirements prescribed by the Scottish Ministers in regulations.”*

8. Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 provides that

*“A notice to leave given by the landlord to the tenant under section 50(1) (a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5.”*

9. The document which has been submitted and referred to by the Applicant as the “notice to leave” is not in the form set out in Schedule 5 of 2017 Regulations. 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.
10. While I have not formally considered the following matters as part of my reasons for rejecting the application, I would observe the following points. The application states eviction is sought on the basis of ground 1 (intends to sell) and ground 12 (rent arrears), however the purported notice made no reference to ground 12 (rent

arrears). Ground 12 could not therefore form a ground of eviction. In addition a notice to leave is to be accompanied by evidence to support the grounds relied on, in this case there did not appear to be any evidence sent in support of the ground relied upon. Finally the notice period for a notice to leave is defined in section 62 (4) and (5) of the 2016 Act and it provides that it is assumed to be served 48 hours after it is sent, this period has also to be included in the calculation of the notice period to ensure compliance with the statutory rules, it appears in this case that the service period was not included in the relevant period.

### **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.

# M Barbour

**29 October 2020**

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**Legal Member/Chair**

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**Date**