



**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 Rules")**

in connection with

**17 Station Road, Loanhead ("the Property")**

**Case Reference: FTS/HPC/CV/21/521**

**Zahid Khan, 40 Charpentier Avenue, Loanhead ("the Applicant")**

**Orchard and Shipman, Third Floor, Sugar Bond House, 2 Anderson Place,  
Edinburgh ("the Respondent")**

1. The Applicant lodged an application with the Tribunal on 8 March 2021. The application is made against the former letting agent of the property, which the Applicant previously occupied as a tenant. In response to requests for further information, the Applicant clarified that he seeks an order from the Tribunal to prevent the Respondent from communicating with him (and arranging for a debt collection company to communicate with him) in relation to alleged rent arrears in relation to the property.

**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 Applicant submitted documents in support of the application which indicate that there is a dispute between the Applicant and his former Landlord regarding

alleged rent arrears. The Applicant claims that agreement had been reached and no further sums are due. However, he has continued to receive correspondence regarding the alleged arrears from a debt collection company. The Legal Member firstly notes that the application has been raised against the wrong person. If the Applicant is being pursued for rent arrears, then the letting agent is doing this on behalf of the landlord. Furthermore, even if the application had identified the correct Respondent the Legal Member is not persuaded that that it has any prospect of success. It is not clear what the Applicant actually seeks by way of order. The former landlord is entitled to correspond with the Applicant regarding sums he claims are due. The Applicant is not obliged to pay, if he disputes that he owes the money. Should the landlord decide to make an application to the Tribunal for payment, the Applicant will be entitled to defend this application and to put forward his evidence in support of that defense. However, no such application has been submitted, and in the meantime it is for the Applicant to decide whether he accepts or disputes the claim which has been intimated to him.

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.

### **Josephine Bonnar**

Legal Member  
6 May 2021