



**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**

**2 Westmoreland Street, Fochabers ("the property")**

**Case Reference: FTS/HPC/EV/21/2240**

**Tessa Grant, 4 Westmoreland Street, Fochabers ("the Applicant")**

**Lewis Hill, 2 Westmoreland Street, Fochabers ("the Respondent")**

1. The Applicant lodged an application seeking an order for possession of the property. In the application form, the Applicant indicated that the Respondent had resided at the property since July 2017. The Tribunal issued a request for further information as it appeared that the Tribunal did not have jurisdiction to deal with the application. In her response, the Applicant stated that she had previously resided at the property with the Respondent, who is her son, that they had agreed that he would purchase the property and that he was now refusing to leave. She also stated but that he had never been a tenant, paid rent or signed a tenancy agreement

## DECISION

2. 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."*

3. 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

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. In terms of Section 16 of the Housing (Scotland) Act 2014 the functions and jurisdiction of the Sheriff in relation to tenancies under the Rent (Scotland) Act 1984 and Housing (Scotland) Act 1988 were transferred to the Tribunal. The Tribunal's jurisdiction in relation to private residential tenancies arises from the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal's jurisdiction is restricted to tenancies granted under these enactments. The Applicant has confirmed that the Respondent is not a tenant, but is occupying the property without her consent. As the Respondents occupation of the property is not a private residential tenancy in terms of the 2016 Act or one of the tenancies specified in Section 16 of the 2014 Act, the Tribunal does not have jurisdiction to deal with the application.
6. The Legal member determines that as the Tribunal does not have jurisdiction to deal with the application, 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  
8 November 2021**