



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

("the property")

Case Reference: FTS/HPC/EV/23/1952

Property : 9 2/2 Kaims Terrace, Livingston EH54 7EX ("Property")

**Stephen Nelson and Dorothy Nelson, 53 Station Road, Broxburn, West Lothian
EH52 5QU ("the Applicant")**

Stephen McCann, 9 2/2 Kaims Terrace, Livingston EH54 7EX ("the Respondent")

1. The Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The documents produced were : a copy short assured tenancy which commenced on 11 November 2010; a copy AT5; copy form AT6, notice to quit and section 33 notice all dated 11 April 2023 and a copy email from the Respondent dated 11 April 2023 confirming receipt of a notice to quit.
2. The Tribunal issued a request for further information on 6 July 2023 to the Applicant. The information requested was : (a) production of a form AT5; (b) a copy of the section 11 notice sent to the local authority and proof of service thereof; (c) evidence of service of the notice to quit, section 33 notice and AT6 in accordance with section 54 of the 1988 Act; and (d) clarification of the basis on which eviction was sought as the AT6 referred to the availability of suitable

alternative accommodation for the Respondent and to the Applicant wishing to sell whilst a section 33 notice and notice to quit had also been produced. A response was requested by 20 July 2023.

3. The Applicant sent an email to the Tribunal dated 15 August 2023 which stated *“We are at our wits end with all of the paperwork you keep asking for. It’s was all sent to Stephen by email which was acknowledged by him and sent to you as proof”*. The Applicant sent two emails to the Tribunal dated 29 August 2023 which indicated an intention to sell the Property. The Applicant sent an email to the Tribunal dated 30 August 2023 attaching a copy AT5. The Applicant sent an email to the Tribunal dated 31 August 2023 referring to financial hardship. No section 11 notice or evidence of service thereof was produced.

DECISION

4. 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.

- 5. After consideration of the application and documents lodged 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 Procedural Rules.**

Reasons for Decision

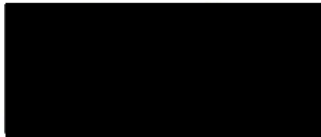
6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application 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.
7. The Applicant seeks recovery of possession of a short assured tenancy in terms of the 1988 Act. The communications received from the Applicant indicate that the AT6, Section 33 notice and notice to quit were all served by email. Each of these notices was served under part II of the 1988 Act. Section 54 of the 1988 Act states that a notice served under Part II of the 1988 Act may be served or given (a) by delivering to him, (b) by leaving it at his last known address, or (c) by sending it by recorded delivery letter to him at that address. Section 54 does not allow for service by electronic means. Whilst that was modified by the Coronavirus (Scotland) Act 2020, the modifications ceased to have effect in October 2022. The notices have not been validly served.
8. In these circumstances, the Legal Member 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.



Joan Devine
Legal Member
5 September 2023