

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

5 Woodrow, Gorebridge, Midlothian, EH23 4AS ("the Property")

Case Reference: FTS/HPC/EV/22/2872

Mr Jamie Anderson, 32 Meadowbank Crescent, Ormiston, East Lothian, EH35 5LG ("the Applicant")

Miss Kylie Hay, 5 Woodrow, Gorebridge, Midlothian, EH23 4AS ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged a copy of form AT5, copy email to the local authority, Notice to Leave and Notice in terms of Section 19 of the 1988 Act (form AT6) in support of the application. The Notice to Leave is issued under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. No evidence of service has been produced in relation to these Notices.

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 application is not accompanied by a Notice to Quit. The Applicant has produced a Notice to Leave in terms of Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 which has no application to short assured tenancies.

6. At part 2 of the form AT6 the grounds for eviction are stated to be “Ground 9: suitable alternative accommodation is or will be available for the tenant or will be or will be available for her when the order for possession takes effect. Ground 10: The tenant has been given notice to quit and proceedings for the recovery of possession have begun: not more than 6 months after the expiry of the notice to quit and the tenant is not entitled to possession of the house by virtue of a new tenancy agreement.”
7. The Legal Member notes that the following documents have not been produced:-
 - Tenancy agreement
 - Evidence to demonstrate that the possession grounds have been met
 - Notice to quit
 - Section 11 Notice to the local authority, as required by Section 11 of the Homelessness etc (Scotland) Act 2003
 - Evidence of service of Notices on the tenant.

Moreover, the Notice to Leave which has been produced has no application to short assured tenancies. The Tribunal therefore cannot entertain the application.

8. 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.

Nicola Irvine

Nicola Irvine
Legal Member
12 September 2022