



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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

18b Byers Road, Kilwinning, KA13 6JT

Case Reference: FTS/HPC/EV/22/2974

KEITH DUNCAN ("the Applicant")

ANDREW GUNN, KELSEY MELROSE ("the Respondents")

1. An application dated 2nd August 2022 was received from the applicant under Rule 109 of the Procedural Rules being an application for an eviction order.
2. By letter to the applicant's representative dated 11th November 2022, the Tribunal requested further information from the applicant in terms of Rule 20. The Tribunal requested the applicant to provide further information concerning the application by 25th November 2022. The applicant has failed to provide the information requested. By e-mail to the applicant's representative dated 19th December 2022, the Tribunal again requested a response to its earlier letter of 11th November 2022. The applicant has failed to provide the information requested.

DECISION

3. I 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."

4. After consideration of the application, the attachments and correspondence, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

5. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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. 9. 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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

6. The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's requests gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

7. Accordingly, for this reason, the application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.

Neil Kinnear
Legal Member
20th January 2023