

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDE, 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 Salon, Lochardil Pharmacy, Morven Road, Inverness IV2 4BU

Case Reference: FTS/HPC/CV/18/0291

**DALE WINCHESTER, LOCHARDIL PHARMACY, COLEBURN HOUSE, COLEBURN,
LONGMORN IV30 8SN ("the Applicant")**

KENNETH GIBB, I BIRCHES COURT, NAIRN, IV12 5R ("the Respondents")

1. On 1 February 2018 an application was received from the applicant. The application was made as an application under Rule 70 of the Rules being an application by virtue of section 16 of the Housing (Scotland) Act 2014 for payment of arrears of rent of £4,162.55.
2. The Application included a Lease Agreement, Solicitor's letter dated 31 March 2016, Record of Rent outstanding and monies received and an email exchange between the Applicant and the Respondent.
3. In terms of the lodged Sub-Lease document, the Head Tenants are designated as David James Allan and Mrs Ann Marie Allan. The Respondent is noted as the Sub-tenant. The Applicant's Solicitors in the lodged letter dated 31 March 2016 refer to an assignation of the rights under the Sub-Lease to the Applicant. No evidence of this has been lodged.
4. In terms of clause 1.8 of The Sub –Lease "the Permitted Use" means use as a hairdressing salon.

DECISION

5. 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."

6. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, 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

7. '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.
8. The issue identified in this action is whether the type of Sub-Lease qualifies as a lease in terms of S 16 of the Housing (Scotland) Act 2014, which determines the jurisdiction of the First-tier Tribunal in relation to regulated and assured tenancies.
9. S 16 (1) of the Housing (Scotland) Act 2014 states:
"16 Regulated and assured tenancies etc.

This section has no associated Explanatory Notes

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).”

10. The Sub-Lease relates to commercial premises with the permitted use being use as a hairdressing salon. It is not a tenancy agreement for a dwelling-house let as a separate dwelling as required for the application of S 8 of the Rent (Scotland) Act 1984 or a contract giving the right to occupy as a residence a dwelling-house and thus not a contract in terms of S 63 of the Rent (Scotland) Act 1984 and is not an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988, because it does not refer to a house being let as a separate dwelling. It is a lease document for commercial use.
11. The Tribunal does not have jurisdiction to deal with the case in terms of S 16 of the Housing (Scotland) Act 2014. The application is misconceived and therefor rejected in terms of Rule 8 on the basis that it is frivolous.

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.

Petra Hennig McFatridge

Petra Hennig McFatridge

Legal Member
12 February 2018

