

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 Rules")

in connection with

4 Shamrock Street, Carnoustie, Angus DD7 7PS

Case Reference: FTS/HPC/EV/18/0872

MR ROBERT MURRAY ("the applicant")

MR PAUL GALLOWAY, MRS STACEY GALLOWAY ("the respondents")

1. On 9th April 2018, an application was received from the applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
 - (a) Copy Short Assured Tenancy Agreement;
 - (b) Copy Notice to Quit;
 - (c) Copy Section 33 Notice;
 - (d) Copy s.11 Notice with e-mail enclosing the same to the local authority;
 - (e) Proof of service.

The applicant's representative was asked to provide copy Form AT5 by letter from the Tribunal dated 17th April 2018. The applicant's representative advised the Tribunal by e-mail of 23rd April 2018 that "copy AT5 is not available".

DECISION

2. I 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, the attachments and correspondence from the applicant, I consider 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

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. 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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.
5. Rule 66(b)(ii) of the Chamber Procedural Rules provides that where a landlord makes an application under section 33 of the *Housing (Scotland) Act 1988*, the application must be accompanied by a copy of the notice by landlord that the tenancy is a short assured tenancy (Form AT5). A short assured tenancy is defined in section 32(1) of the *Housing (Scotland) Act 1988* as being an assured tenancy which is for a term of not less than six months and in respect of which a Form AT5 is served.
6. In the absence of a copy Form AT5, the applicant is unable to satisfy the Tribunal that a short assured tenancy has been created in terms of the *Housing (Scotland) Act 1988*, and the application does not comply with the provisions of Rule 66(b)(ii) of the Chamber Procedural Rules.
7. Accordingly, this application has no prospect of success and must be rejected upon 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.

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Neil Kinnear
Legal Member
26th April 2018