

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

Flat B Ground Floor Left, 8 Walker Road, Torry, Aberdeen AB11 8BU ("the Property")

**Case Reference: FTS/HPC/EV/19/2003**

**MISS MICHELLE HAY ("the Applicant")**

**MISS STEPHANIE COLE ("the Respondent")**

1. The application was made under Rule 109 of the Rules being an application for a Private Residential Tenancy Eviction Order. The application sought an order on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The application was accompanied by a copy of the written tenancy agreement between the parties. The application was received by the Tribunal on 26 June 2019.
2. A request for further information was sent to the Applicant's representatives on 2 July 2019. Specifically, a copy of the notice to leave given to the tenant, proof of this notice being given and a copy of the notice to the local authority under Section 56(1) of the 2016 Act were requested.
3. The Applicant's representative provided a copy of a notice to leave dated 3 July 2019. The notice to leave, at part 4, confirmed that an application to the Tribunal for an eviction order would not be made before 4 August 2019. The notice to leave had been served by Sheriff Officers on 4 July 2019. The notice under Section 56(1) of the 2016 Act was dated 4 July 2019.

**Decision**

4. The circumstances in which an application is to be rejected are governed by 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, 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**

6. In this application, the Applicants are relying on the notice to leave dated 4 July 2019. The notice appears to have been served after the application had been made to the Tribunal. The notice period expires on 4 August 2019.

7. Section 52(2) and (4) of the 2016 Act states:-

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

Section 54(1) of the 2016 Act states:-

*(1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

8. There is clearly a general prohibition on a landlord applying to the Tribunal during the notice period. The Tribunal does not consider that it would be reasonable to entertain the application when in breach of Section 54(1) of the 2016 Act. The notice to leave is an important step in the process advising the tenant how long they have to move out. In the present case, it would appear that the application was made prior to the notice to leave even being given.

9. Furthermore, and in any case, Section 56(1) of the 2016 Act states:-

*(1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated.*

A landlord is therefore required to give the appropriate notice to the local authority prior to an application being made. In the present case, this has not been done. The dispensing power contained in Section 52(4) of the 2016 Act does not apply. For these reasons, it would appear to the Tribunal that the present application is premature and cannot be entertained until after 4 August 2019. Should the Applicant still wish to proceed, the application may be re-submitted after that date.

10. '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. Accordingly, the present application is rejected 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.

Mr Alastair Houston

Legal Member

29 July 2019