

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



DECISION AND STATEMENT OF REASONS OF JAMES BAULD, 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

**89 Forth Crescent, Dundee, DD2 4JD**

Case Reference: **FTS/HPC/EV/19/1414**

**Mr Sam Eljamel** ("the applicant") per his representative, Pavillion Properties, 86  
Bell Street, Dundee DD1 1HN

**Mr Nicholas Selway** ("the respondent")

1. On 9 May 2019, 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. Various documents were provided with the application and additional documents were provided after requests for further information from the Tribunal

## 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. This application seeks an order for possession of a property let under a short assured tenancy. The methods for recovery of possession of such a tenancy are set out in the Housing (Scotland) Act 1988 ("the 1988 Act"). One method is provided by section 33 of the 1988 Act. That requires the service of a valid Notice to Quit and an additional notice in terms of section 33(1)(d) of the 1988 Act. Each of these notices requires to meet certain legal requirements. The Notice to Quit must give a minimum of twenty eight days' notice to the tenant. The notice under section 33(1)(d) must give a minimum of two months' notice to the tenant of the landlord's intention to raise proceedings for possession. In this case the applicant has indicated that he has served one single notice upon the respondent in which an attempt is made to combine both a Notice to Quit and the required notice under section 33 (1)(d). The single notice in this case is dated 7 January 2019 and has an effective date of 28 February 2019. That does not provide the required two months' notice in terms of section 33. Accordingly any action which bears to be raised under section 33 of the 1988 Act is bound to fail as the notices provided do not meet the statutory requirements..

6. In the absence of valid notice as required by section 33(1)(d), it follows that this application is premature and 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.

## Mr James Bauld

James Bauld  
Legal Member  
7 June 2019