



**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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**

**18/5 Piershill Terrace, Edinburgh, EH8 7EU**

**Case Reference: FTS/HPC/PR/20/0036**

**Mr Prabakaran Kuppusamy ("the Applicant")**

**Miss Rabia Ashraf ("the Respondent")**

1. By application dated 7<sup>th</sup> January 2020 the Applicant seeks an order under Rule 78 of the Procedural Rules, which is an application for compensation for misrepresentation or concealment by a landlord in terms of section 21 of the Rent (Scotland) Act 1984.
2. A request for further information was issued to the Applicant on 17 January 2020. The Applicant was asked address why he thought that an application under Rule 78 was appropriate given the terms of the legislation and the circumstances. A reply was requested by 31<sup>st</sup> January 2020. No reply was received within the timescale and a reminder was issued, seeking the information by 19<sup>th</sup> February 2020. No reply has been received to that reminder.

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**DECISION**

3. 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.”*

4. After consideration of the application, the supporting documentation and correspondence from the Applicant, 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**

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Milden hall) Magistrates Court*, (1998)

Envy 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.

6. In the absence of information requested and as the Applicant has failed to respond to requests for further information required by the Tribunal, the Legal member concludes that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

### **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.

Alison J Kelly  
Legal Member  
16<sup>th</sup> March 2020

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