

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON 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 Procedural Rules")

in connection with

8 Croftside Avenue, Croftfoot, Glasgow, G44 5LB

Case Reference: FTS/HPC/PR/19/1854

Mr James McCann, Mrs Linda McCann ("the applicant")

Mr Richard Haggart, Ms Emma Tweed ("the respondent")

On 17th June 2019, an application was received from the Applicants' solicitor. The application sought eviction of the Respondents for non performance of an obligation in terms of a contract.

By letter dated 2nd July 2019, the Tribunal requested further information from the Applicant's solicitor. The Applicant's solicitor replied by email dated 15th July 2019, seeking a three week extension to allow them to obtain a note from the Sheriff confirming why the Sheriff Court had declined jurisdiction. The extension was granted

and the tribunal sent an email to the Applicants' solicitor confirming that the new deadline for replying was 20th August 2019. Nothing further was received from the Applicants' solicitor. The tribunal wrote again on 2nd September 2019 extending the deadline to 9th September 2019. Nothing further has been received from the Applicants' solicitor.

DECISION

I considered the application in terms of Rule 8 of the 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."

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 or vexatious within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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 to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

Accordingly, for this reason, this application must be rejected upon the basis that it is frivolous or vexatious within the meaning of Rule 8(1)(a) of the Procedural Rules.

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
23rd September 2019