



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

in connection with

2 Chamfrom Gardens, Stirling ("the Property")

Case Reference: FTS/HPC/PR/20/2739

Kenny Kokhing Leung, 98 Lancefield Quay, 11/1 Glasgow ("the Applicant")

**Archibald Cowan, Appt 3002, Zig Zag Tower, PO Box 24049, Doha, Qatar ("the
Respondent")**

1. By application received on 30 October 2020, the Applicant seeks an order in terms of Rule 69 of the Procedure Rules. The Applicant states that he is seeking compensation from the Respondent for injury sustained when he was assisting the tenant of the property. No documents were lodged with the application.
2. On 25 November 2020 and 7 January 2021, the Tribunal issued requests for further information. The Applicant was advised that applications under Rule 69 relate to damages for unlawful eviction in terms of Section 36 of the Housing (Scotland) Act 1988. The Applicant was asked to confirm that he had been the residential occupier of the property. If so, he was directed to submit the information and documents required by Rule 69 or the application may be rejected. No response has been received.

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 and documents lodged in support of same 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 Rules.**

Reasons for Decision

5. '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.
6. Rule 69 of the Procedure Rules relates to applications for damages for unlawful eviction in terms of Section 36(3) of the Housing (Scotland) Act 1988. The application must be submitted by the former residential occupier and must be accompanied by details of the amount of damages sought, which must be based on Section 37 of the 1988 Act. The application lodged by the Applicant indicates that he is not the tenant or residential occupier. Furthermore, the compensation sought appears to be for personal injury and not unlawful eviction. The Tribunal has issued two requests for further information to the Applicant to clarify the basis of the application and has directed the Applicant to provide the information required in terms of Rule 69 of the Procedure Rules, but no response has been received
7. The Applicant has failed to respond to two requests for further information issued by the Tribunal in terms of Rule 5 of the Procedure Rules. Furthermore, he is not the former residential occupier of the property, and is not seeking damages for unlawful eviction. The Legal Member determines 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.

J. B

Josephine Bonnar
Legal Member
12 February 2021.