

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF DAVID BARTOS 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

50 West End Drive, Bellshill, Lanarkshire, ML4 3AS

Case Reference: FTS/HPC/EV/20/0487

JESSICA WALKER, 50 West End Drive, Bellshill, Lanarkshire, ML4 3AS ("the Applicant")

**DAVID GEMMELL, 41 Kenilworth Crescent, Bellshill, Lanarkshire, ML4 3EQ ("the
Respondent")**

BACKGROUND

1. On 12 February 2020 the Applicant lodged an application for an order for payment to her of a sum of money by the Respondent. The application was made in terms of rule 78 of the Procedural Rules and section 16 of the Housing (Scotland) Act 2014.

DECISION

2. For the reasons given below this application is rejected.

REASONS FOR DECISION

3. 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; . . .

(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. For the purposes of this rule the word 'frivolous' does not have its ordinary day-to-day meaning. What 'frivolous' means for the purposes of rules of legal procedure was defined by Lord Justice Bingham in the case *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9 when he stated at page 16:- *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.

5. This application was made under rule 78 of the Procedural Rules. Rule 78 covers applications under section 21 of the Rent (Scotland) Act 1984 in relation to regulated tenancies under that Act. Rule 78 does not cover assured tenancies under the Housing (Scotland) Act 1988 such as the one which she alleges she entered into on or about 4 July 2015. Given that the Applicant does not seek an order in relation to a regulated tenancy under section 21 of the 1984 Act, it follows that this application under rule 78

is doomed to fail.

6. However the Applicant has, prudently, made simultaneous applications under rules 70 and 103 of the Procedural Rules. Those rules cover applications for orders for payment arising out of assured tenancies and arising out of the Tenancy Deposit Schemes (Scotland) Regulations 2011. There is therefore nothing to be gained by the Applicant seeking to amend the current application to bring it under rules 70 or 103.
7. Accordingly, for these reasons, this application must be rejected upon the basis that the application is 'frivolous' in its legal meaning for the purposes of rule 8(1)(a) of the Procedural Rules. In addition under rule 8(1)(c) and on the same basis I have good reason to believe that it would not be appropriate to accept this application and send it to a case management discussion for further consideration. The application must therefore be rejected.

What you should do now

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.

David Bartos
Legal Member acting under delegated powers
24 February 2020