

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

1/3 Bruntsfield Gardens, Edinburgh ("the Property")

Case Reference: FTS/HPC/PR/20/2334

Paul Hartmann, 3F3 5 Conniston Terrace, Edinburgh ("the Applicant")

**Fraser MacDonald, Villa L'Oursiere, BP 675, St Cergue, 1264 Vaud, Switzerland
("the Respondent")**

1. By application received on 6 November 2020, the Applicant seeks an order in terms of Rule 69 of the Procedure Rules and Section 36 of the Housing (Scotland) Act 1988 ("the 1988 Act")
2. On 19 November 2020, the Tribunal issued a request 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 1988 Act and that the measure of damages has to be calculated in accordance with Section 37 of the 1988 Act. The Applicant was directed to provide evidence of the assessment of damages calculated in terms of Section 37. On 4 December 2020, the Applicant provided his own assessment of the damages being claimed, based on his assessment of the value of the property. He advised that he intended to obtain and provide a report from a surveyor in support of this. On 18 December 2020, 20 January 2021 and 12 February 2021 the Tribunal asked the Applicant to provide a copy of the surveyors report. On 2 March 2021, he provided a copy

of a home report for the property. A further request was issued to him which advised that this did not meet the requirements of section 37, as it only provided a valuation based on vacant possession. On 26 March 2021, the Applicant provided an email from DM Hall Surveyors which stated that there was no material difference in valuation between the property with vacant possession and with him as a sitting tenant, because his tenancy had been a short assured tenancy. On 8 April and 5 May 2021 the Applicant was asked if he wished to proceed with the application since the evidence he had provided indicated that no compensation could be awarded. No response was received to either letter.

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 accompanied by details of the amount of damages sought, which must be based on Section 37 of the 1988 Act. Section 37 states, "(1) The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between, (a) the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time, and (b) the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right."
7. The Applicant has provided the Tribunal with a short email report from a surveyor which states that there is no material difference in value in this case, because the Applicant had a short assured tenancy which provides limited security of tenure. As there is no difference in value upon which an award of

damages can be based, the Legal Member is satisfied that 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.

Josephine Bonnar
Legal Member
25 May 2021