



**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/20/2353

David Grierson, Address Unknown ("the Applicant")

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

1. By application received on 9 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 Applicant states that he is seeking compensation of £20000 from the Respondent because of harassment, stalking and discrimination leading to the Applicant moving out of the property. No documents were lodged with the application.
2. On 23 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 Housing (Scotland) Act 1988. The Applicant was directed to provide a copy of the tenancy agreement, evidence of the assessment of damages in terms of Section 37 of the 1988 Act and further details of the conduct by the Respondent. No response was received to the letter or to a reminder sent on 7 January 2021. On 18 January 2021, the Applicant submitted a second application under Rule 69 which stated

that the Applicant was seeking to overturn an eviction order and compensation for medical expenses and accommodation costs. Again, no documents were lodged.

3. On 16 February and 17 March 2021, the Applicant was issued with requests for further information in relation to both applications. He was asked if he wished to withdraw one of the applications as the second appeared to be a duplicate of the first. He was also directed to provide a copy of the tenancy agreement, an assessment of the damages claimed in terms of Section 37 of the 1988 Act and an address or contact address as the only address provided in the application was the property address. The Applicant had confirmed that he no longer resided there. The Applicant was advised that failure to provide this information may result in the applications being rejected. No response was received in relation to this application. A response was received in relation to the related/duplicate application but the information and documents specified were not provided.

DECISION

4. 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.”

- 5. 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

6. '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.
7. 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 state the name and address of the former residential occupier (Rule 69(a)(i)). Furthermore, the application must be accompanied by details of the amount of damages sought, which must be based on Section 37 of the 1988 Act. The Applicant has failed to provide a current contact address or details of the assessment of damages in terms of Section 37. The Tribunal has directed the Applicant to provide this information on several occasions, and also asked for

a copy of the tenancy agreement. However, no response has been received.

8. The Applicant has failed to respond to four requests for further information issued by the Tribunal in terms of Rule 5 of the Procedure Rules. Furthermore, he has failed to provide information and documents required by Rule 69 of the Procedure Rules. 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
14 April 2021