



**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 Rules")**

in connection with

Reference number: FTS/HPC/PR/20/0437

138 Victoria Street, Stromness, KW16 3BU ("the Property")

The Parties:

Alice Bucker, Timothy Kasoar 59 Grieveship Brae, Stromness, KW16 3BG ("the Applicants")

Cathy Stronach, James Stronach 5 Yaxley Loke, Norfolk NR27 0FG ("the Respondents")

1. By application received on 7 February 2020 the Applicants seek a wrongful termination without eviction order in terms of Rule 110 of the Rules and Section 58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a tenancy agreement in support of the application.
2. On 26 February 16 June 2020 the Tribunal issued requests for further information to the Applicants. The Applicants were asked to confirm that they had not been served with an eviction order, and therefore wished to proceed in terms of Section 58(2) of the 2016 Act. The Applicants were also asked to clarify the basis upon which the Tribunal could consider the application as they had not submitted a copy Notice to Leave which complies with Section 62 of

the 2016 Act. In their responses the Applicants confirmed that they had not been served with an eviction order and were seeking a wrongful termination without eviction order. They provided a copy of a “whats app” message sent to them on 5 December 2019 which states, “both families have a sense of uncompromising and lack of respect for each other”. “we therefore ask that you vacate our home as soon as you can find alternative accommodation. But at the latest 2 months from today. February 6th”. The Applicants stated that the whats app message is the notice to leave which was given to them. They believed that it was valid and ceased to occupy the property following receipt of same. The Landlord has misled them, saying that they did not have a PRT. They believed that the Notice was valid and enforceable. They referred to the terms of Section 62 of the 2016 Act, stating that the Notice complies with this section because it was in writing, specified the date that the landlord expected them to leave the property and included a reason for the eviction, albeit not one of the grounds specified in the legislation.

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 the documents submitted by the Applicant 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. The Applicants have not lodged a Notice to Leave with the application. They have indicated that following receipt of a "what's app" message, asking them to vacate the property, they did so as they thought that the message was a valid and enforceable notice to them that they had to move out of the property. The Applicants also argue that the notice they received complies with the requirements of the legislation, notwithstanding the fact that it is not in the correct format. The Legal Member is not persuaded by this argument.
7. Section 58 of the 2016 Act states "(1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50."

Section 50 states “(1) A tenancy which is a private residential tenancy comes to an end if (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property.” It follows that an application for a wrongful termination without eviction order can only be made if the Applicant ceased to occupy the property falling service of a notice to leave.

8. Section 62(1) of the 2016 Act states “References in this part to a notice to leave are to a notice – (a) is in writing, (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal, (c) states the eviction ground or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the property before the day specified in accordance with paragraph (b) and (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (“the 2017 Regulations”) state “6. A notice to leave given by the landlord to the tenant under section 50(1)(a)(termination by notice to leave and tenant leaving) of the Act must be in the form set out in Schedule 5”.
9. The Legal Member notes that the Notice given to the Applicants is not a Notice to Leave in terms of Section 62 of the 2016 Act. It does not specify the date on which the Respondent expected to be entitled to make an application to the Tribunal. It does not specify one of the eviction grounds in Schedule 3 of the Act, although this schedule contains an “exhaustive” list of the eviction grounds which can be used. (Section 51(2) of the 2016 Act. It is not in the format prescribed by the 2017 Regulations. The Legal member therefore 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
20 July 2020