



**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

2/2 8 Dodside Place Sandyhills, G32 9EJ ("the Property")

Case Reference: FTS/HPC/CV/22/2456

Phil McQuillan, 7 Sandyhills Road, Glasgow ("the Applicant")

**Sarah-Jane Charters McMillan, 2/2 8 Dodside Place Sandyhills, G32 9EJ
("the Respondent")**

1. The Applicant seeks a payment order in terms of Rule 70 of the Rules. The applicant has submitted two identical applications seeking payment of arrears of £2874. The second identical application lodged has been allocated a case reference number of FTS/HPC/CV/22/2483.
2. The applicant was written to on 23 August 2022 and 5 October 2022 requesting confirmation that they wished to withdraw one of the CV applications for payment, as both applications appear to seek an order for payment in respect of the same debt. No response was received to either letter.

DECISION

- (i) 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.

(ii) 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

(iii) '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.

- (iv) Letters were sent to the applicant on 23 August 2022 and 5 October 2022 seeking clarification from the Applicant as to why two applications have been lodged which are identical and appear to seek payment of the same debt. This information was not provided. The application is therefore entirely lacking in specification and does not provide fair notice to the respondent as to the claim against them.
- (v) 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.



31 October 2022