



**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

16 Flat 1, Avonmill Road, Linlithgow ("the Property")

Case Reference: FTS/HPC/TE/22/3567

Kevin Morrison, Flat 20, 1 Heron Place, Edinburgh ("the Applicant")

Vincent McColgan, 106 Avalon Gardens, Linlithgow ("the Respondent")

1. The Applicant seeks an order in terms of Section 16(1) of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). A number of related applications were also lodged and two were subsequently withdrawn. In response to various requests for further information, the Applicant advised that the tenancy ended on 23 September 2022. The application was received on 26 September 2022. The Applicant stated that the application had actually first been submitted on 22 August 2022. However, as a valid application which referred to Rule 107 was not received until 26 September 2022, the application was not registered by the Tribunal until that date. A number of further information requests were subsequently issued to the Applicant. In particular, the Tribunal asked the Applicant to explain the basis for making the application after the tenancy had ended.

DECISION

2. 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.”

3. **After consideration of the application and documents lodged in support of same the Legal Member considers there is good reason to believe that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Rules.**

Reasons for Decision

4. In terms of Section 16(3) of the 2016 Act, an application under Section 16(1) and Rule 107 can only be made during the course of the tenancy and has to be made as part of an application under Section 14(1) of the 2016 Act and Rule 105. In terms of Section 14 and Rule 105, a tenant can apply to the Tribunal to draw up the terms of the tenancy. The Applicant submitted the application after the tenancy had ended. He did not submit an application under Rule 105, which can also only be made by a current tenant. In the circumstances, the Legal Member determines that there is good reason to believe that it would not be appropriate to accept the application. 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 Bonnar

Josephine Bonnar
Legal Member
20 March 2023