

DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)

Chamber Ref: FTS/HPC/EV/19/3028

Re: Property at 8 Dunmore Street, Dundee, DD3 0EQ (“the Property”)

Parties:

Taylor Housing (“the applicant”)
Peter Innes (“the respondent”)

Virgil Crawford (Legal Member)

BACKGROUND

1. On 26 September 2019 an application was received from the applicant under Rule 66 of the Rules, being an application by a private landlord for an order to terminate a short assured tenancy due to rent arrears,
2. Attachments were provided with the application including a copy of the lease, a copy of a “Notice to Remove”, a copy notice in terms of section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) - commonly referred to as a form AT6 - and a copy notice in terms of section 33 of the 1988 Act and a copy notice intimated to the local authority in terms of section 11 of the Homelessness (Scotland) Act 2003,
3. The application was considered by the Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

4. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:
 - 5.—(1) *An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*
 - (2) *The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*
 - (3) *If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the*

First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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;

...

(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 attachments, 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 THE DECISION

6. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court, [1997] EWCA Civ 1575*. He states: "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 this definition that the Legal Member has considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
7. No proof of service of the various notices had been provided,
8. Title to the property is in the name of Mark Charles Taylor and Lynda Jayne Taylor, spouses, equally between them and the survivor of them. The lease is granted by "Taylor Housing (1) Taylor" as landlords. A landlord registration number is provided in the lease and it is stated to be "Per Pavilion Properties". The notice in terms of section 33 of the 1988 Act states the landlords to be "Pavilion Properties c/o Taylor Housing",
9. An applicant to the Tribunal seeking an order for eviction of a tenant must show a clear title and interest to raise the application. The property is owned by two named individuals. The lease bears to have been granted by a

- different legal entity. The notice in terms of section 33 of the 1988 Act identifies the landlord as yet another separate legal entity,
10. Despite the Tribunal requesting further information to evidence any link between the various legal entities no further information has been provided. In the circumstances the Tribunal cannot be satisfied that the Applicant had any right or title to grant the lease nor to raise an action for eviction,
 11. For the foregoing reasons, the Legal Member does not consider there to be any prospect of success of this application and it is rejected on the basis that the application is frivolous.

RIGHT OF APPEAL

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:-

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Virgil Crawford
Legal Member

29 November 2019
