

**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

**13f2 Sandpiper Road, Edinburgh, EH6 4TR ("the Property")**

**Case Reference: FTS/HPC/EV/24/0029**

**Andrew Mearns, 19 Palmerston Road, Edinburgh, EH9 1TL ("the Applicant")**

**Mr Ali Bartafani, 13f2 Sandpiper Road, Edinburgh, EH6 4TR ("the Respondent")**

1. The Applicant submitted an application dated 4 January 2024 in terms of Rule 65 of the Rules. In support of the application, the Applicant submitted a copy of an assured tenancy agreement, rent statement, notice to leave and form AT6.

**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 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**

4. '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.
5. The Tribunal sent an email to the Applicant's representative on 8 February 2024. In that email, the Tribunal advised that the notice to leave is only applicable to private residential tenancies and not assured tenancies. The Tribunal also observed that the form AT6 appeared to be invalid as it was served on 1 January 2024 but required the Respondent to quit by 31 October 2023 and that no period of notice was given. It was suggested that the Applicant should consider withdrawing the application to enable service of the correct notice(s). A reply to this email was requested by 22 February 2024. The Applicant was advised that if no response was received, the President may decide to reject the application.

No response was received from the Applicant's representative.

6. The notices produced by the Applicant are invalid and do not support the application. 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.

Nicola Irvine  
Legal Member  
21 March 2024