



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

44 Carn Dearg Road, Fort William, highland PH33 6QD ("the Property")

Case Reference: FTS/HPC/PR/24/0751

**Lorne MacFarlane, 42 Spittal Street, Stirling FK8 1DU and Findlay Marrant, Ben
Ard, Banavie, fort William, Highland PH33 7LY ("the Applicant")**

Callum Smith ("the Respondent")

1. By Application dated 14 February 2024 the First Applicant sought an order for payment under rule 103.
2. On 20 February 2024 the Tribunal sought clarification of the order sought; a copy of the tenancy agreement; evidence of payment of the second half of the deposit; evidence of the tenancy end date; a mandate from the Second Applicant and a current address for the Second Applicant and the Respondent. The information was required to be lodged by 27 February 2024. By email dated 26 February 2024 the First Applicant sought an extension of time. This was granted by email dated 27 February 2024. A response was sought within 7 days. No response was received. The Tribunal issued a further request for the required information on 8 March 2024. No response was received.

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 documents lodged 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 Procedural 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.

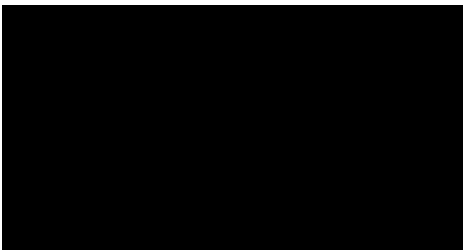
6. The nature of the order sought was unclear. There was no evidence of the Second Applicant having authorised the First Applicant to make the application on his behalf. The Tribunal was told that the Second Applicant was "out of the country". No address was provided. No tenancy agreement was provided and the Tribunal were not told the end date of the tenancy which was required in order to determine if the application was timeous. No address was provided for the Respondent although the Tribunal was told he was in Australia. In these circumstances, the Legal Member 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.



Legal Member
11 April 2024