



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

91 Lomond Place, Irvine KA12 9PF ("the Property")

Case Reference: FTS/HPC/CV/23/3969

Una Fitzgerald, 115 Haypark Avenue, Belfast RT7 3FG ("the Applicant")

Rentolease, 52 Templehill, Troon KA10 6BE ("the Applicant's Representative")

Sean Stewart ("the Respondent")

1. By Application dated 8 November 2023 the Applicant sought an order for payment eviction under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 under rule 111 of the Rules.
2. By email dated 11 December 2023 the Tribunal sought further information. The Tribunal requested an address for the Respondent as none had been provided, a rent statement, confirmation from the joint owner that the application could proceed in the sole name of the Applicant and evidence of landlord registration. The Applicant sought extensions of time to provide the information on 20 December 2023, 9 January 21024 and 31 January 2024 all of which were granted. The Tribunal followed up the request for further information on 27 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.

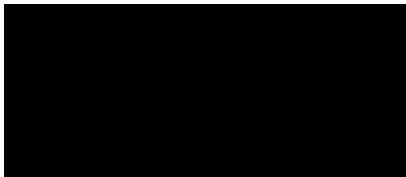
6. The Applicant failed to provide an address for the Respondent and did not apply for permission to serve by advertisement. The Applicant also did not provide a statement of arrears or clarification of whether the application could proceed in the sole name of the Applicant. In these circumstances, the 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.



Joan Devine
Legal Member
30 April 2024