



**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

0/1, 60 Carlibar Road, Barrhead G78 1AD ("the Property")

Case Reference: FTS/HPC/EV/23/4645

Paul Molloy, 36 Dovecothill Street, Barrhead G78 1BS ("the Applicant")

Diarmuid Murray, 0/1, 60 Carlibar Road, Barrhead G78 1AD ("the Respondent")

1. By Application dated 30 November 2023 the Applicant sought an order for eviction under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 under rule 109 of the Rules.
2. By email dated 24 January 2024 the Tribunal sought further information. The Tribunal requested a properly completed section 11 notice and a rent statement. In addition the Tribunal noted that in the application the Applicant sought an order for eviction based on grounds 11 and 12A whilst the Notice to Leave was based on grounds 1 and 12. The Tribunal told the Applicant that the application could not include any grounds that had not been included in the Notice to Leave and invited the Applicant to submit a fresh application. The Applicant responded by email dated 24 January 2024 asking about the time period to be covered by the rent statement. The Tribunal replied declining to provide legal advice.
3. On 11 March 2024 the Tribunal emailed the Applicant following up the information requested on 24 January 2024. A reply was sought by 25 March

2024. No response was received.

DECISION

4. 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.

- 5. 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

6. '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.

7. The Applicant failed to provide a correctly completed section 11 notice and a rent statement. More fundamentally the application was based upon grounds for eviction which had not been included in the Notice to Leave produced to the Tribunal. In terms of section 52(5)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal may not consider whether an eviction ground applies unless it is a ground which is stated in the Notice to Leave accompanying the landlord's application in terms of subsection (3) of section 52. 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