

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**Decision with Statement of Reasons of Joan Devine, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**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/19/0129**

**Re: 18 Goatfoot Road, Galston KA4 8BJ ("Property")**

**Parties:**

**Sharon Lamond Property ("Applicant")**

**Margaret Gibb ("Respondent")**

**Tribunal Member:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the Rules") and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

An application was received from the Applicant by the Tribunal under Rule 109 on 9 January 2019 by email although the application was dated 9 January 2018. The grounds for possession were stated to be "rent arrears". The Applicant produced with the application a statement showing rent arrears and a certificate of service from sheriff officers referring to service of a notice to leave on 11 January 2019. No copy notice to leave was produced.

The Tribunal asked the Applicant to provide a copy of the notice to leave and a copy of the notice given to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003.

The Applicant sent to the Tribunal a further statement showing rent arrears; a revised Form E dated 13 February 2019; a notice to leave dated 15 January 2019 which stated that an application would not be made to the Tribunal for an eviction order before 13 February 2019 and a copy of intimation to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003.

The Tribunal asked the Applicant to provide evidence of service of the notice to leave. The Applicant sent to the Tribunal a certificate of service by sheriff officers which referred to service of a notice to leave on the Respondent on 13 March 2019 and a copy of a notice to leave dated 11 March 2019 which stated that an application would not be made to the Tribunal for an eviction order before 15 April 2019.

Throughout the correspondence between the Applicant and the Tribunal no copy tenancy agreement was provided.

On 9 April 2019 the application was considered by the Tribunal.

### **Reasons for Decision**

The Tribunal considered the application in terms of Rule 8 of the 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;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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."*

'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, 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*".

In this application the Applicant has failed to make an application to the Tribunal based upon a notice to leave, with evidence of service of that notice on the Respondent, providing the relevant period of notice and which application was made

to the Tribunal on a date after the date specified in the notice to leave as being the earliest date on which an application would be made to the Tribunal for an eviction order.

Applying the test identified by Lord Justice Bingham in the case of *R v North West Suffolk (Mildenhall) Magistrates Court* (cited above) the application is frivolous, misconceived and has no prospect of success. The Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

### Right of Appeal

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.

Joan Devine

Legal Member

9.4.19

Date