

**DECISION AND STATEMENT OF REASONS BY THE 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 Procedural Rules")

in connection with

**Flat 0/3, 209 Kirkton Avenue, Glasgow, G13 3AF  
The Property**

**Case Reference: FTS/HPC/EV/20/0242**

**The Parties:-**

**Mrs Isabel Landells, 16 Monkton Road, Prestwick, KA9 1AR,**

**The Applicant;**

**Black Hay Solicitors, 5 Wellington Square, Ayr KA7 1EN,**

**The Applicant's Representative and**

**Elizabeth Akinmuda, Flat 0/3, 209 Kirkton Avenue, Glasgow, G13 3AF**

**Respondent**

**Background**

1. By Application sent on 23<sup>rd</sup> January 2020 the Applicant applied to the Tribunal under Rule 66 of the Procedural Rules for an order for possession upon termination of a short assured tenancy.
2. In terms of Rule 8 of the Procedural Rules the Legal Member of the Tribunal, under the delegated powers of the Chamber President, considered whether or not there were grounds to reject the Application. The Legal Member determined to reject the Application on the basis that he had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

**Reasons for Decision**

3. The Legal Member considered the Application papers which were lodged and, in particular, noted that the ish date in the copy Notice to Quit was incorrectly stated to be 18<sup>th</sup> November 2019 when the tenancy ran from 19<sup>th</sup> February 2015 on a month to month basis.

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. 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*". It is that definition which the Legal Member had to consider in this Application in order to determine whether or not this Application is frivolous, misconceived, and has no prospect of success.
5. The ish date in the Notice to Quit has been incorrectly stated to be 18<sup>th</sup> November 2019 rather than 19<sup>th</sup> November 2019. The Notice to Quit cannot be amended by the Tribunal. Even if the Applicant had sought to proceed in terms of Rule 65 of the Procedural Rules this would not have been appropriate as the parties' Tenancy Terms and Conditions do not contain the Possession grounds set out in Schedule 5 of the Housing (Scotland) Act 1988. Therefore the Legal Member has determined that the Application, in its current form, has no prospect of success.
6. Accordingly, having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Legal Member has concluded that the current Application is frivolous and has rejected it under Rule 8(1)(a) of the Procedure Regulations.

#### **Decision**

7. The Legal Member, with delegated authority from the Chamber President, determined to reject the Application as being frivolous in terms of Rule 8(1)(a) of the Procedure Regulations.

G McWilliams  
Legal Member

5th March 2020

G McWilliams

#### **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:-

**A party 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 on request.**