

**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

**18A Mason Court, Motherwell, ML1 1YN ("the Property")**

**Case Reference: FTS/HPC/EV/23/1103**

**MR Bryan McNally, 26 Abercorn Drive, Hamilton, ML3 7EX ("the Applicant")**

**Ms Linda Higgins, 18A Mason Court, Motherwell, ML1 1YN ("the Respondent")**

1. The Applicant submitted an application for an eviction order in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). In support of the application, the Applicant lodged a copy of the tenancy agreement, form AT6, notice in terms of section 33 of the 1988 Act and a section 11 notice.

**DECISION**

2. 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.*

- 3. After consideration of the application and the documents submitted by the Applicant 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 Rules.**

### **Reasons for Decision**

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 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.
5. The Tribunal wrote to the Applicant on 18 May 2023 requesting further information to allow the application to be considered. The Applicant was advised that ground 2 referred to in the form AT6 is not applicable as that relates to eviction being sought by a heritable creditor. The Applicant was also advised that although ground 13 is referred to in the application, it is not referred to in the form AT6 and no details had been given about a breach of the tenancy agreement by the tenant. The Tribunal also observed that a notice to quit had not been provided in proper form. The Tribunal requested a response with the necessary information by 1 June 2023, otherwise the President may decide to reject the

application.

6. The Applicant responded by email of 31 May 2023. The Applicant explained that he intends to sell the property but could not identify this as a ground of eviction. The Applicant asked why there is no ground for eviction based on a need to sell the property.
7. The Tribunal responded by email of 30 June 2023 explaining that the Tribunal cannot provide advice. The Tribunal suggested organisations which may be able to offer advice. The Applicant was advised that if he could not provide the information requested on 18 May 2023, he could withdraw the application and submit an application with the correct supporting documentation. The Applicant responded on 30 June 2023 but no further documentation was produced.
8. The Tribunal gave the Applicant 2 opportunities to provide the information requested, but that information was not produced. The form AT6 which has been produced in support of the application is not valid because it refers only to ground 2, which is not applicable and states “Landlord intends to sell the property”, which is not a ground of eviction under the Housing (Scotland) Act 1988. The Tribunal suggested to the Applicant that he may wish to take advice from a housing advisory service. The documentation produced does not support the application for eviction. The Legal Member therefore 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.

**Nicola Irvine**



Nicola Irvine  
Legal Member  
17 August 2023