

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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

48 Mauchline, Calderwood, East Kilbride, G74 3RZU

Case Reference: FTS/HPC/EV/19/3021

Lee Keir, 4 Cairns Court, Cambuslang, G74 3RZ ("the Applicant")

**Craig Walker and Sharon Hamilton, 48 Mauchline, Calderwood, East Kilbride
G74 3RZ ("the Respondent")**

1. By application dated 18 September 2019 the Applicant seeks an eviction order against the Respondent. A copy tenancy agreement and Notice to leave were submitted in support of the application. The Applicant provided a postal address, an email address and a telephone number for himself in the application. On 27 September 2019 a letter requesting further information was issued to the Applicant by post and email. The email could not be delivered and no response was received to the letter issued by post. A further letter was issued to the Applicant by post and email on 23 October 2019, again requesting further information. Again no response was received and email could not be delivered. Subsequent attempts to contact the Applicant by telephone and by post to the address provided on 25 November 2019 have been unsuccessful and no response has been received.

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, the supporting documentation and correspondence from the Applicant, 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

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 application lodged with the Tribunal seeks an eviction order in terms of the Rule 109 of the Rules. Rule 109 states, "Where a landlord makes an application under Section 51(1) (for an eviction order) of the 2016 Act, the application must (b) be accompanied by – (i) evidence showing that the eviction ground or grounds has been met; ... (iii) a copy of the Notice given to the local authority as required under Section 56(1) of the 2016 Act". The Applicant has failed to lodge a copy of a Notice to the local authority and has failed to submit evidence that the eviction ground has been met. The Applicant has been issued with letters requesting this documentation on 27 September, 23 October and 25 November 2019 and has failed to respond. The email address provided appears to be invalid and attempts to telephone him on the number provided have also been unsuccessful.
6. In the absence of the documentation required in terms of Rule 109 and as the Applicant has failed to respond to requests for further information required by the Tribunal, the Legal member therefore concludes 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.

Josephine Bonnar
Legal Member
16 December 2019
