

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

74 Cantieslaw Drive, East Kilbride, G74 3AQ ("the Property")

Case Reference: FTS/HPC/EV/22/2333

Mr Colin Adams, Flat 4, 4 Woodside Walk, Hamilton, ML3 7HY ("the Applicant")

Mr Jack McIntyre, 74 Cantieslaw Drive, East Kilbride, G74 3AQ ("the Respondent")

1. The Applicant submitted an application for an eviction order in terms of Rule 109 of the Rules and Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a tenancy agreement, rent statement, notice to leave and section 11 notice in support of the application.

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's representative on 12 August 2022 requesting evidence that the Applicant authorised the representative to act, evidence of compliance with the pre-action protocol and representations on the validity of the Notice to Leave. The Applicant's representative responded by email on 16 August 2022 advising that authorisation from the Applicant and copy emails evidencing compliance with the pre-action protocol had been posted. The Applicant's representative also advised that the Notice to Leave produced could not be relied upon and a new Notice to Leave was served on 16 August 2022. The Tribunal sent a further letter to the Applicant's representative on 20

September 2022 asking for confirmation that the present application was to be withdrawn. The Tribunal requested a response by 4 October 2022 and was advised that if no response was received, the application may be rejected. The Tribunal wrote to the Applicant's representative again on 14 November 2022, requesting a response to the letter of 20 September 2022 by 28 November 2022 and advising that failure to respond may lead to the application being rejected. No response was received.

6. Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") sets out the requirements of making an application. In terms of that Rule, the Chamber President or another member with delegated powers of the Chamber President may request further documents. The Rule provides that an application is not accepted where the outstanding documents requested are not received within a reasonable period.
7. The Applicant's representative has been given two opportunities to provide the required information and has failed to respond. 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
16 December 2022