

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

14 Mull, St Leonards, East Kilbride G74 2DX ("the Property")

Case Reference: FTS/HPC/EV/22/2745

Pauline Watson, 55 Caravelle Gardens, East Kilbride, G74 4FN ("the Applicant")

Mr Christopher McSorley, 14 Mull, St Leonards, East Kilbride, G74 2DX ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant lodged a tenancy agreement, Section 33 Notice and Notice to Leave and form AT6 in support of the application. The Notice to Leave is issued under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. The date specified in Part 4 of the Notice is 3 October 2022. The Notice is dated 1 August 2022. The Section 33 Notice indicates that the Applicant requires vacant possession as at 2 October 2022 and is dated 1 August 2022. The date specified in Part 4 of the form AT6 is 2 October 2022 and is dated 1 August 2022. No evidence of service has been produced in relation to any of these Notices.

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 application is not accompanied by a Notice to Quit. The Applicant has produced a Notice to Leave which is in terms of Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 which has no application to short assured tenancies. In any event, the Notice to Leave indicates that “An application will not be submitted to the Tribunal for an eviction order before 3 October 2022. This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period.”
6. The Section 33 Notice states “I require vacant possession as at 2 October 2022. The tenancy will reach its termination date as at that date and I now give you notice that you are required to remove from the property on or before 2 October 2022.”
7. The form AT6 states at Part 4 “Proceedings will not be raised before 2 October 2022 (which is the earliest date at which proceedings can be raised under Section 19 of the Housing (Scotland) Act 1988)”
8. The Legal Member notes that the application has been presented before the expiry of the Section 33 Notice and no evidence has been produced confirming service of the Notice. In addition, the Applicant has not produced the Notice to Quit, as required. The Tribunal therefore cannot entertain the application.
9. 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
Legal Member
6 September 2022