



**DECISION AND STATEMENT OF REASONS OF YVONNE MCKENNA, 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")**

**Chamber Ref: FTS/HPC/CV/19/1725**

**Re: 118B High Street, Montrose, DD10 8JE("the Property")**

**Parties:**

**Mr. Paul Bertolotto, Mrs Gemma Bertolotto ("the Applicant")**

**Mr. Scott Learmonth, 2 Hume Street, Montrose, DD10 8JD ("the Respondent")**

**Tribunal Member:**

**Yvonne McKenna (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).**

**Background**

1. The application was received by the tribunal under Rule 111 on 5<sup>th</sup> June 2019. The application is for civil proceedings in relation to a private residential tenancy under section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016. The following documents were enclosed with the application:

- (i) A Private Residential Tenancy Agreement in respect of the Property which commenced on 13<sup>th</sup> July 2018 December 2016 . It was dated and signed 13<sup>th</sup> July 2018.
  - (ii) Letter (undated) to the Applicant from the Respondent intimating notice to vacate the Property with immediate effect requesting a closing balance statement up to 13/03/2019.
  - (iii) Rent Account for the Property showing money paid and arrears between 13<sup>th</sup> July 2018 and 29<sup>th</sup> February 2019.
2. On 18<sup>th</sup> June 2019 the application was considered by the Tribunal and a request for further information issued on 18<sup>th</sup> June 2019. The Applicant was requested to provide the following :
- Please provide evidence of the Applicant's title and interest to recover the sums claimed, given that they do not appear to have been either the heritable proprietors or the landlords during the period when the arrears are claimed to have been due ie. 1/3/19-13/3/19

The Applicant was requested to provide the information by 2<sup>nd</sup> July 2019 failing which the application may be rejected.

No response was received by the Tribunal.

3. On 18<sup>th</sup> July 2019 the Applicant was sent a second request for information by the Tribunal. The Applicant was requested to provide the following;-
- Please provide the information requested in the Tribunal's letter to you of 18<sup>th</sup> June 2019;and
  - Please provide written authorisation from the Applicant for you to act on their behalf.

The Applicant was requested to provide the information by 1<sup>st</sup> August 2019 failing which the application may be rejected.

The applicant has failed to respond to this request

## **DECISION**

1. I considered the application in terms of Rule 8 of the 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."*

2. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

## **REASONS FOR DECISION**

3. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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 I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.*

4. The applicant has failed to respond to the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
5. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

### **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.

Yvonne McKenna  
Legal Member  
16<sup>th</sup> August 2019