



**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

18/2 Captains Drive, Edinburgh, EH16 6QW ("the Property")

Case Reference: FTS/HPC/EV/22/1860

Mrs Janice Blackley, 88 Fords Road, Edinburgh, EH11 3HT ("the Applicant")

**Miss Louise Solway, 18/2 Captains Drive, Edinburgh, EH16 6QW ("the
Respondent")**

1. The Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a rent statement in support of the application. The Tribunal issued a request for further information on 16 June 2022. In response, the Applicant lodged a copy of the Notice to Leave dated 6 May 2022, a copy Section 11 Notice and a rent statement. The Tribunal issued a further request for information on 7 July 2022. The Applicant responded to that request on 7 July 2022, but did not provide the required information. The Tribunal issued a further request for information on 10 August 2022, setting out what is required and suggesting that the Applicant may wish to seek legal advice to assist with the application. The Applicant responded on 11 August, 16 August and 19 August 2022. The Applicant did not provide the required information.

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 Notice to Leave which accompanies the application is dated 6 May 2022. No post office certificate, sheriff officer's execution or email is produced to confirm service on the Respondent.
6. The Legal Member notes that the Tribunal has asked the Applicant on two occasions to provide a full copy of the tenancy agreement, evidence of service of the Notice to Leave on the Respondent and evidence of service of the Section 11 Notice on two occasions. The Applicant was asked to produce a corrected Section 11 notice. In addition, the Applicant was asked to clarify which grounds of eviction were being relied upon. Although the Applicant responded to the requests for information, the required information was not produced.
7. One of the reasons the Tribunal required sight of a full copy of the tenancy agreement is to consider the appropriate mode of service of any Notice to Leave.
8. Clarification was sought about the ground(s) for eviction being relied upon to enable the Tribunal to consider whether the Respondent has been given sufficient notice.
9. In the absence of proof of service of the Notices, the Tribunal cannot be satisfied that a valid Notice to Leave has been served upon the Respondent, nor that a corrected Section 11 Notice has been served on the local authority. The Tribunal cannot properly consider an application unless the appropriate supporting documents are produced.
10. 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
9 September 2022