

**DECISION AND STATEMENT OF REASONS BY THE 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 Procedural Rules")

in connection with

**Flat 2/1, 4 Eden Street, Dundee DD4 6HN  
the Property**

**Case Reference: FTS/HPC/EV/19/3690**

**The Parties:-**

**Mr Ewan Scott, The Sheilling, Bowriefauld, Letham, Angus DD8 2LX**

**Applicant; and**

**Mr Logan Hards, Flat 2/1, 4 Eden Street, Dundee DD4 6HN**

**Respondent**

**Background**

1. By Application sent between 18<sup>th</sup> November 2019 and 4<sup>th</sup> December 2019 the Applicant applied to the Tribunal under Rule 109 of the Procedural Rules for an order for an Eviction Order.
2. In terms of Rule 8 of the Procedural Rules the Legal Member of the Tribunal, under the delegated powers of the Chamber President, considered whether or not there were grounds to reject the Application. The Legal Member determined to reject the Application on the basis that he had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

**Reasons for Decision**

3. The Legal Member considered the Application papers which were lodged and, in particular, noted the terms of the Applicant's email sent on 4<sup>th</sup> December 2019. In that email the Applicant stated that the Notice to Leave had been sent by standard post and was received by the Respondent on 16<sup>th</sup> September as the Respondent called the Applicant's wife that day and was angry in his tone. In that email the Applicant offered to serve the Notice again by Recorded Delivery Post. The parties' Private Residential Tenancy Agreement provides that all communications, including Notices, must be made in writing using hard copy by personal delivery or recorded delivery post and/or by email.

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. 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 the Legal Member had to consider in this Application in order to determine whether or not this Application is frivolous, misconceived, and has no prospect of success.
5. The Applicant has not served the Notice to Leave on the Respondent in accordance with the provision in the parties' Private Residential Tenancy Agreement. Therefore the Notice to Leave has not been validly served and the Legal Member determined that the current Application has no prospect of success.
6. Therefore, having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Legal Member concluded that the current Application is frivolous and has rejected it under Rule 8(1)(a) of the Procedure Regulations.

### **Decision**

7. The Legal Member, with delegated authority from the Chamber President, determined to reject the Application as being frivolous in terms of Rule 8(1)(a) of the Procedure Regulations.

G McWilliams  
Legal Member

12th December 2019

### **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:-

**A party 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 on request.**