



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

28 Woodside Terrace, Dundee DD4 9AS ("Property")

Case Reference: FTS/HPC/EV/22/2257

Maureen Duke, 22 Gillies Place, Broughty Ferry, Dundee DD5 3LE ("Applicant")

**David Duke, 22 Gillies Place, Broughty Ferry, Dundee DD5 3LE ("Applicant's
Representative")**

Maxine Edgar, 28 Woodside Terrace, Dundee DD4 9AS ("Respondent")

1. The Applicant seeks an order for possession of the Property in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). A copy of a private residential tenancy agreement, Notice to Leave dated 7 July 2022 ("NTL") and copies of various emails sent by the Applicant to the Respondent were lodged in support of the application.
2. The Tribunal issued a request for further information on 3 August 2022 to the Applicant's Representative. The Tribunal noted that the NTL was dated 7 July 2022 and also stated that 7 July 2022 was the date before which no application for eviction could be raised. The Tribunal asked how and when the NTL was served and noted that if the NTL was served on 7 July 2022 it did not give the Respondent the requisite 28 days notice plus 2 days for delivery. The Tribunal noted that if the NTL was served on 7 July 2022 it would be invalid and the

application was premature. The Tribunal asked whether the Applicant wished to withdraw the application and if not to advise why the Applicant believed the NTL was valid in terms of sections 62 and 54(2) of the 2016 Act. The Applicant's Representative replied by email dated 11 August 2022 and said that he believed the notice should stand as he had issued emails to the Respondent since 24 February 2022 stating his intention to proceed with an eviction. The Tribunal had sight of emails dated 24 February, 3 March and 4 April 2022.

DECISION

3. 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.

4. **After consideration of the application and documents lodged 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 Procedural Rules.**

Reasons for Decision

5. '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.
6. The Applicant seeks recovery of possession of a private residential tenancy. In terms of section 54 of the 2016 Act a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice. The period of notice to be given is stated in section 54(2). In this case no period of notice was given in the NTL. The Applicant's Representative seeks to rely on emails sent between 24 February and 4 April 2022. In terms of section 6 of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 a notice to leave given by a landlord to the tenant under section 50(1)(a) of the 2016 Act must be in the form set out in schedule 5 of the Regulations. The emails relied upon by the Applicant's Representative were not in the form set out in schedule 5. In those circumstances they cannot be relied upon as being a valid notice to leave. The NTL did not provide the requisite period of notice in terms of the 2016 Act. In these circumstances, the Legal Member 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.

Joan Devine

Joan Devine
Legal Member
9 September 2022