



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
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**

**2 Morton drive, Dalrymple, KA6 6QA ("the property")**

**Case Reference: FTS/HPC/EV/19/2869**

**John Terence Simmons, Christopher Mitchell and Margaret Elizabeth Garry, 7  
Green Street Lane, Ayr, KA8 8BL ("the Applicants")**

**Mohammed Farooq, 2 Morton Drive, Dalrymple, KA6 6QA ("the Respondent")**

1. By application dated 12 September 2019 the Applicants seek an order for recovery of possession of the property in terms of Rule 65 of the Rules. The Applicants lodged a number of documents in support of the application including copy tenancy agreement dated 29 December 2014, AT5, AT6 and a Notice to leave. The application states that the Applicants seeks possession of the property because they intend to market it for sale.
2. A request for further information was issued to the Applicant on 9 October 2019 and a response received from the Applicants on 22 October 2019.

**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 application lodged with the Tribunal seeks recovery of possession of an assured tenancy in terms of Section 18 of the Housing (Scotland) Act 1988 ("the Act"). The Applicant has not served a valid Notice to Quit on the Respondent terminating the tenancy contract. The Notice served by the Applicant is a Notice to Leave in terms of the Private Housing Tenancies (Scotland) Act 2016 and relates to private residential tenancies created after 1 December 2017. As the Applicant has not served a valid Notice to Quit the tenancy contract has not been terminated.
7. The Legal Member proceeded to consider the AT6 Notice which has been lodged and whether the application can be considered in terms of Section 18(6) of the Act. The Legal member notes that both the application and the AT6 Notice lodged with the application state that the Applicants require possession of the property in order to market it for sale. This is not one of the grounds for recovery of possession contained within Schedule 5 of the Act. Section 18(1) of the Act states "The First-tier tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act". Furthermore, the AT6 Notice does not give the required period of Notice in terms of Section 19(4) of the Act. The AT6 is therefore invalid and the application which has been submitted is incompetent.
8. The Legal member therefore concludes 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.

Josephine Bonnar  
Legal Member  
4 November 2019