



**DECISION AND STATEMENT OF REASONS OF ALISON J KELLY, 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

**27 Wellgrove Street, Flat 2/L, Dundee, DD2 2QY ("the Property")**

**Case Reference: FTS/HPC/CV/22/1005**

**Marshall Clark ("the Applicant")**

**Collette Fretwell ("the Respondent")**

1. The Applicant seeks an patyment order in terms of Rule 111 of the Rules and Section 16 of the Housing (Scotland) Act 2014 ("the 2014 Act"). The Applicant lodged a tenancy agreement, bank statements and copies of correspondence with the Respondent. On 22<sup>nd</sup> April 2022 the Applicant was sent a letter by the Tribunal asking for an address for the respondent and several other pieces of information. No response was received and a reminder was sent to the Applicant on 31<sup>st</sup> May 2022. On 14<sup>th</sup> June 2022 the Applicant contacted the Tribunal seeking an extension of time to respond to the request. On 14<sup>th</sup> June 2022 the Tribunal wrote to the Applicant granting the extension and seeking the information by 28<sup>th</sup> June 2022. Nothing was lodged and a further reminder was sent on 21<sup>st</sup> July 2022. The Applicant responded on 21<sup>st</sup> July 2022 to say that he was struggling to get an address for the respondent and that the system was so unfair and was leading him to try to sell the flat. The Tribunal responded on 22<sup>nd</sup> July 2022 asking if this was the final response that he wished to submit.

No reply has been received from the Applicant.

## **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 Applicant has not supplied all of the information necessary to allow the Application to be accepted. 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.

# Alison J Kelly

Alison J Kelly  
Legal Member  
12<sup>th</sup> September 2022

