

**Housing and Property Chamber
First-tier Tribunal for Scotland**



**DECISION AND STATEMENT OF REASONS
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

Flat G, 2 Grovepark Court, Glasgow G20 7DT ("the property")

Case Reference: FTS/HPC/EV/18/0828

Glasgow Women's Aid ('the applicant')

Ms Shamila Bibi ("the respondent")

1. On 26 March 2018 paperwork was received from the applicant via their solicitor seeking an eviction order. The application did not specify the Rule in the Chamber Procedural Rules under which it was brought. In section one of the application form the tenancy type was left blank and in an accompanying letter the solicitors for the applicant indicated that the applicant had entered into a non-statutory occupancy agreement in July 2017 and the respondent is resident in the property and has no right or title to do so. The applicant's solicitors stated that they were unable to select an appropriate application type at section one of the application form as there is no provision that Rule 79 applies to non-statutory occupancy agreements created after 2 January 1989. However, notwithstanding this difficulty they are seeking an order for possession from the First-tier Tribunal. Attachments were provided with the application form to support the application comprising an occupancy agreement; copy correspondence between the applicant and respondent; written notice of termination (no evidence of service on respondent provided); local authority notice under the Homelessness etc. (Scotland) Act 2003; and copy letter from Social Care Partnership at Glasgow City Council to the respondent.

2. DECISION

The Chamber President considered the application in terms of rule 5 and 8 of the Chamber Procedural Rules. These Rules provide

Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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.

After consideration of the application, the attachments and submission from the applicant, the Chamber President decided 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.

3. Reasons for the Decision

'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 Chamber President has considered as the test in this application, and on consideration of this test, the President considers that this application is frivolous and is misconceived and has no prospect of success for the following reasons:-

Section 16 of the Housing (Scotland) Act 2014 provides for the functions and jurisdiction of the sheriff in relation to civil actions arising from regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984 ("the 1984 Act"), Part VII contracts within the meaning of section 63 of the 1984 Act; and assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988 ("the 1988 Act"), are transferred to the First-tier Tribunal. This includes matters of eviction and recovery of possession.

Section 16 provides as follows:

Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.

The basis for the respondent's occupancy of the property is an occupancy agreement which commenced in July 2017. The applicant states that this agreement has been brought to an end. Based on the information and application paperwork provided, there has never been a regulated tenancy or Part VII contract in place since both of these types of contracts must be entered into by the start of 1989. The only other type of contract which falls within the Chamber's jurisdiction is an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988. However, there is no suggestion that the arrangement between applicant and respondent is a tenancy and indeed the occupancy agreement provided specifically states that "the Agreement is not a lease and does not confer rights of tenancy to the Occupant". There is no suggestion in the papers that the applicant considers that an assured tenancy has been created.

For the foregoing reasons, the Chamber President does not consider the First-tier Tribunal for Scotland to have jurisdiction in this case and therefore the application is misconceived and is rejected on the basis that it is frivolous.

What you should do now

If you accept the Chamber President's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President 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.

A Devanny

Mrs. Aileen Devanny
Chamber President
10 April 2018