

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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

1 Limefield Crescent, Bathgate, West Lothian, EH48 1RG ("the Property")

Case Reference: FTS/HPC/PR/22/2843

Mrs Janice Bennie, 6 Easter Longridge Crofts, Longridge, By Bathgate, West Lothian, EH47 8AA ("the Applicant")

Mr Andrew Gold, 1 Limefield Crescent, Bathgate, West Lothian, EH48 1RG ("the Respondent")

1. The Applicant submitted an application form G and indicated that an order was sought under the Housing (Scotland) Act 2006 and Rule 49. In part 7(c) of the for, the Applicant states "Order being sought is for access to the property in order to carry out all and any necessary repairs in addition to Electrical and Gas Certification including any remedial works."

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 Tribunal wrote to the Applicant on 16 September 2022, noting that the Applicant wishes access to undertake works to ensure compliance with the repairing standard. The Tribunal invited the Applicant to consider the terms of section 28A of the Housing (Scotland) Act 2006 and Rule 55 and was asked to clarify on what basis the application is made. The Applicant was asked to respond by 30 September 2022 and was advised that if no response was

received, the application may be rejected. No response was received. The Tribunal sent a further letter to the Applicant on 9 November 2022 advising that the Applicant appears to have used the wrong application form and referred to the wrong rule. The Applicant was directed to the Chamber website for guidance. The Applicant was advised that a response was required by 23 November 2022 and advised that if no response was received, the application may be rejected. No response was received.

6. Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) sets out the requirements of making an application. In terms of that Rule, the Chamber President or another member with delegated powers of the Chamber President may request further documents. The Rule provides that an application is not accepted where the outstanding documents requested are not received within a reasonable period.
7. The Applicant has been given two opportunities to provide the required information and has failed to respond. 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.

Nicola Irvine

Legal Member/Chair

16 December 2022