

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/CV/19/3342

Re: 2 Manderston Meadows, Newton Mearns, G77 6GL ("the Property")

Parties:

Mr Shaan Hussain, Ms Asima Hussain ("the Applicant")

Cleanturnaround Ltd ("Applicant's Representatives")

Mr John Niven, Mrs Nicola Niven ("the Respondent")

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 70 on 17 October 2019. The grounds for the order were rent arrears. The following documents were provided:
 - (i) Rent Ledger showing arrears;
 - (ii) Correspondence between the parties in September 2019.

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2. The Tribunal considered the application and wrote requesting further information by letter dated 1 November 2019. The Applicant's Representative was asked:

- (a) To provide an address for the Respondents or to apply for permission to serve by advertisement.

The Applicant's representative was asked to provide the information by 15 November 2019 failing which the application may be rejected.

The Applicant's representative responded by email of 6 November asking for further time to provide the information requested. The Tribunal granted the request for further time until 29 November 2019.

3. No response was received and the Tribunal wrote again requesting the same information by letter of 18 December 2019. The Tribunal gave until 31 January 2020 to respond.

The Applicant's Representatives wrote by email of 18 December asking how to apply for service by advertisement. The Tribunal provided this information by email of 18 December 2019. To date the information has not been provided.

4. The application was considered again by a Legal member on 11 February 2020.

Reasons for Decision

5. The Tribunal 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;·*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

(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."

6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9. At page 16, he states: - "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic".

7. The application seeks to proceed under Rule 70. Rule 70 requires the Applicant to provide the name and address of the other Party. The Applicant has not done so and

has not applied for service by advertisement. The Tribunal could not grant an order in the circumstances.

8. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

A.Strain

11 February 2020

Legal Member/Chair

Date