

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.

In respect of application by Miss Aimee Fleming in terms of Rule 95 of the Rules.

**Case reference FTS/HPC/LA/19/3113**

At Glasgow on the 30<sup>TH</sup> December 2019, Martin Joseph McAllister, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Miss Aimee Fleming in respect of the property at Old Registry Cottage, Redding Road, Brightons, FK20HG (the property) which she rents and which tenancy is managed by Taylor William Letting Agents. The application is under Section 48(1) of the Housing (Scotland) Act 2014 ( the 2014 Act) and Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber ( Procedure ) Regulations 2017 ( the 2017 Rules) The application is dated 1<sup>st</sup> October 2019 and was received by the Tribunal Administration on 3<sup>rd</sup> October 2019.
2. Section 48 (4) of the 2014 Act states "No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question."  
The Tribunal wrote to the applicant on 16<sup>th</sup> October, 7<sup>th</sup> November and 19<sup>th</sup> December all 2019 seeking further information. The letter of 7<sup>th</sup> November set out that the applicant requires to have notified the letting agent in writing as to why she considers that it has failed to comply with the code of practice, that fair notice and time for response requires to be given to the letting agent and that the Tribunal requires the applicant to write to the letting agent.  
The applicant responded by advising that she had telephoned the letting agent informing it of the fact that she considered that it had not followed the code of practice.
3. I consider that insufficient notice had been given to the letting agent of the breach of the code of practice in question. The applicant had been given an opportunity to make the appropriate intimation and had not done so.

4. Section 48 (5) of the 2014 Act states that “The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.” In my view the letting agent had not been advised of the breach far less been given time to remedy it.
5. Rule 8(1)(a) of the 2017 Rules allows an application to be rejected by the Chamber President if **“they consider that an application is vexatious or frivolous”**.
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. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above.
8. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. The letting agent has not been advised of the alleged breach of the code of practice and has not been given time to rectify any breach.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Martin Joseph McAllister

Legal Member