

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision Under Section 48 of the Housing (Scotland) Act 2014 Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/LA/19/2517

Parties:

Patrick Gillen, 116 Bawhirley Road, Greenock, Inverclyde, PA15 2LU ("the Applicant")

Homefinders Inverclyde, 111 West Blackhall Street, Greenock, PA15 1YD ("the Respondent")

At Glasgow on the 11 October 2019, Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland rejected the above application in terms of Rule 8(1) (a) and (c) of the Rules.

1. This is an application by Mr Patrick Gillen against Homefinders Inverclyde (the letting agents) in respect of a property owned by the applicant and managed by the letting agents. The application was dated 4 March 2019 and was received by the Tribunal on 12 August 2019.
2. The application was accompanied by a number of copies of emails between the applicant and the letting agent.

3. On 30th August 2019 the applicant was sent a letter by the Tribunal which required him to provide more information and, in particular, to provide evidence that he had complied with the terms of Sections 48(4) and 48(5) of the Housing (Scotland) 2014 the terms of which are “ No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question” and “ 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. The letter gave details of what was required. No response was received and a reminder was sent to the applicant on 3rd October 2019 which again stated what was required. He was advised that a response was required by 10th October 2019 failing which the application may be rejected. No response has been received.
4. Rule 8(1) (a) of the Rules allows an application to be rejected by the Chamber President or another member acting under delegated powers if “**they consider that an application is vexatious or frivolous**”.
5. “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”.
6. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above.
7. 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 provision of sections 48 (4) and 48(5) the Housing (Scotland) Act have not been followed.

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.