

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

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**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/EV/19/0519**

**Re: 57 Carleith Avenue, Duntocher, Clydebank, G81 6JB ("the Property")**

**Parties:**

**Mr Patrick McDowell ("the Applicant")**

**Miss Stacy Paterson ("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 65 on 18 February 2019. The grounds for possession/eviction were Grounds 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:
  - (i) Tenancy Agreement dated 23 July 2014 in respect of the Property which stated it was for a period from 23 July 2014 until 24 January 2015;
  - (ii) Form AT5 dated 23 July 2014;
  - (iii) AT6 dated 13 February 2019 which states that proceedings will not be raised before 8 April 2019;

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- (iv) Notice to Quit addressed to the Respondent dated 13 February 2019 which specified 23 April 2019 as the date by which the Respondent had to quit;
- (v) Section 33 Notice dated 13 February 2019 which specified the termination date of the tenancy as 23 April 2019;
- (vi) Section 11 Notice;
- (vii) Royal Mail recorded delivery "Proof of Delivery".

### Reasons for Decision

2. 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."*

3. '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*".
4. The application was considered by a legal member of the Tribunal on 11 March 2019. The Tribunal wrote to the Applicant's agents drawing to their attention the fact that the application had been lodged before the date specified in the AT6. The Tribunal asked the agents to confirm whether they had another AT6 failing which the application may be rejected as premature. The Tribunal asked for a response by 25 March 2019.
5. No response was received from the Applicant's agents by 25 March 2019. The Tribunal wrote again on 2 April 2019 requesting a response by 9 April 2019 failing which the application may be rejected.
6. No response was received by 9 April 2019. In light of the failure to respond the tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The tribunal considered that the application was premature and accordingly, frivolous, misconceived and had no prospect of success. Furthermore, the

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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.

Mr Alan Strain

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Legal Member/Chair

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Date

2 May 2019