



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/19/2077

Re: 127B High Buckholmside, Galashiels, Scottish Borders, TD1 2HP ("the Property")

Parties:

Mrs Margaret Dunlop ("the Applicant")

JB Lettings Limited ("Applicant's Representatives")

Mr Gary Forrest ("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 rejected 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 109 on 3 July 2019. The application sought eviction and recovery of possession under Grounds 10, 11, 12 and 14 to Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (**Act**). The following documents were enclosed with the application:
 - (i) Tenancy Agreement commencing 9 September 2018;

- (ii) Notice to Leave dated 24 June 2019;
- (iii) Email to Local Authority dated 24 June 2019.

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 Tribunal wrote to the Applicant's agents by letter of 22 July 2019 asking for further information:
- (a) The application appeared to be premature as the Notice to Leave specified 25 July 2019;
 - (b) The application stated the Respondent had removed so it appeared the application was unnecessary; and
 - (c) A current address for the Respondent.

The Tribunal asked for a response by 5 August 2019.

5. No response was received. 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 frivolous, misconceived and had 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.

Alan Strain

Legal Member/Chair

14 August 2019

Date