



**Decision with Statement of Reasons of Helen Forbes, 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/20/0183**

**Re: 24 Mountoliphant Crescent, Ayr, KA7 3EQ ("the Property")**

**Parties:**

**Miss Lisa Evans ("the Applicant")**

**Mr Daniel Philip Lock ("the Respondent")**

**Tribunal Member:**

**Helen Forbes (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 21<sup>st</sup> January 2020. The grounds for the order were rent arrears. The following documents were provided:

- (i) Inventory Report;
- (ii) Check Out Report;
- (iii) Correspondence between the Applicant and her letting agent regarding rent arrears dated 20<sup>th</sup> December 2019.

2. The Tribunal considered the application and wrote requesting further information by letter dated 22<sup>nd</sup> January 2020. The Applicant was asked:

- (a) To confirm whether she wished to apply for permission to serve by advertisement as the address of the Respondent was unknown.

The Applicant was asked to provide the information by 29<sup>th</sup> January 2020, failing which the application may be rejected.

3. No response was received and the Tribunal wrote again requesting the same information by letter of 7<sup>th</sup> February 2020, giving until 21<sup>st</sup> February 2020 to respond.

4. No response was received.

5. The application was considered again by a Legal member on 10<sup>th</sup> March 2020.

### Reasons for Decision

6. 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."*

7. '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".

8. 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.

9. 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.**

Helen Forbes

**10 March 2020**

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**Legal Member/Chair**

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**Date**