



**Decision with Statement of Reasons of H 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/EV/22/2566**

**Re: Craigendunton Waterside, Kilmarnock, KA3 6JJ ("the Property")**

**Parties:**

**Mark Baird ("the Applicant")**

**Unknown ("the Respondent")**

**Tribunal Member:**

**Ms H 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. An application was received by the Tribunal under Rule 65 on 27<sup>th</sup> July 2022. The Applicant was seeking an order for possession under grounds 12 and 13 of Schedule 5 of the Housing (Scotland) Act 1988. The Applicant lodged associated documents.
2. The application was considered by the Tribunal and further information was requested by letter dated 25<sup>th</sup> August, requesting a response by 8<sup>th</sup> September 2022, failing which the application may be rejected, as follows:
  1. You have not included the name of the Respondent in the application or the Form AT6. We cannot progress an application without the Respondent's name and address, and the validity of the notice is likely to be affected by the lack of a name.

2. The manner in which the documentation has been presented is not acceptable. You have included several photographs of single pages without any explanation. Please ensure that each document is re-submitted as one file, and named with the name of the document. So, the Form AT6, which has several pages, should be submitted as one document named 'Form AT6', the section 11 notice as one document named 'section 11 notice', and so on.

3. There does not appear to be a Notice to Quit, although the format in which the application has been lodged makes it difficult to identify individual documents.

4. You have submitted several unredacted bank statements without any indication of their relevance.

5. You have not provided a copy of the tenancy agreement, which is required.

6. You have not provided a rent statement showing rent due, rent paid and a running total of rent arrears, which is required.

7. You have not provided any explanation or evidence as to how ground 13 is met.

Please provide your comments on the above and confirm whether you wish to withdraw the application, and raise another application having served the correct documents on the tenant of the Property, and after the relevant period of notice has expired. You would be strongly advised to take legal advice on this matter.

3. No response to the letter was received.

4. By letter dated 24<sup>th</sup> October 2022, the Applicant was provided with a further period of 14 days to provide the required information. No response to the letter was received.

5. The application was considered further on 1<sup>st</sup> December 2022.

### **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;·

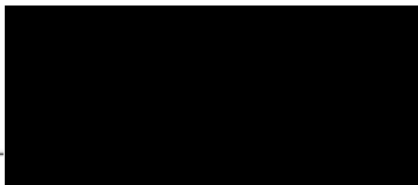
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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. Rule 65 provides that certain information must be stated, and certain documentation lodged. This includes the name and address of the tenant, a copy of the tenancy agreement, if available, failing which, as much information as possible about the tenancy, evidence that the ground or grounds have been met, and a copy of the notice to quit. This information and documentation has not been provided and the application cannot be progressed in its absence.
9. 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. It would not be appropriate to accept the application. 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.



Legal Member/Chair

Date

1<sup>st</sup> December 2022

