



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/CV/22/2522

Re: 1/1 208 Westmuir St, Glasgow, G31 5BS ("the Property")

Parties

**Mr Peter Aitchison (Applicant)
Mr Antonio Di Vito (Respondent)**

1-2-Let (Lettings and Sales) Ltd (Applicant's Representative)

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 70 on 25 July 2022. The application sought an order for payment in respect of the landlord's failure to provide information.

2. On 24 August 2022 the Tribunal emailed the Applicant in the following terms:

"Before a decision can be made, we need you to provide us with the following: The inhouse convenor has reviewed the application. To enable it to proceed please provide the following within 14 days: 1. Please provide your mandate from the applicant authorising you to act. 2. Please clarify if the joint owner is also to be a party to the application. Please provide his mandate authorising you to act and

providing his instructions. 3. Please provide a copy of the tenancy agreement. All you have provided is a receipt from the tenant. Please reply to this office with the necessary information by 7 September 2022. If we do not hear from you within this time, the President may decide to reject the application."

3. No response was received.
4. The Tribunal considered the application and wrote again on 22 November 2022 in the following terms:

"Before a decision can be made, we need you to provide us with the following: Your application has been referred to a legal member. The legal member responds as follows: 1. Please provide the information requested in the tribunal's letter of 24 August. You have provided 2 pages of the tenancy agreement and something that appears to be part of an email from an unknown party. Please provide the information requested within 14 days failing which the application may be rejected. Please reply to this office with the necessary information by 6 December 2022. If we do not hear from you within this time, the President may decide to reject the application."

5. No response was received.

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. In light of the lack of response from the Applicant 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 the failure to provide necessary information constituted 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

27 January 2023

Legal Member/Chair

Date