



**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/23/1685**

**Re: Flat 1/2, 252 Craigpark Drive, Glasgow, G31 2TA ("the Property")**

**Parties**

**Mrs Elizabeth Purdie (Applicant)**

**Mears Housing Management (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.**

**Background**

1. The application was received by the Tribunal under Rule 109 on 24 May 2023.
2. The application was considered by the Tribunal on 27 June 2023. The Tribunal wrote to the Applicant in the following terms:

"The tenancy agreement provided is between the Applicant and Mears Ltd. A notice to leave has been lodged along with the application. A notice to leave is the document required to bring a private residential tenancy ("PRT") to an end. The tenancy agreement provided is not in the form of a PRT. The PRT was created by the Private Housing (Tenancies)(Scotland) Act 2016. Section 1 sets out the meaning of a PRT as being a tenancy where "the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling" . In this case the property has

not been let to an individual but to a limited company. It appears to the Tribunal that the tenancy agreement provided cannot be a PRT and is not a contract the termination of which otherwise falls within the jurisdiction of this Tribunal. If you wish to provide a written representations in support of your application being within the jurisdiction of this Tribunal, please reply to this office with the necessary information by 11 July 2023.”

The Applicant responded by email of the same date:

“I would like to convey to the Tribunal that I need to sell this property to avoid any further financial hardship. I am retired and my fixed term mortgage is due for renewal over the next few months. Therefore, this is increasing my anxiety and my need to sell. When I first let the property it was my understanding it was for individual use albeit ultimately MEARS are now involved. I feel I have been placed in an untenable position and have approached the Tribunal as a legal forum to resolve this matter.”

### **Reasons for Decision**

3. 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."*

4. '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".*

5. The application seeks to proceed under Rule 109. The Tribunal does not have jurisdiction in respect of the tenancy agreement between the Parties as it is not a Private Residential Tenancy as defined under the **Private Housing (Tenancies) (Scotland) Act 2016**.

6. 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. 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.**

A Strain

24 July 2023

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Legal Member/Chair

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Date