

Housing and Property Chamber
First-tier Tribunal for Scotland



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/22/3677

Re: 47 Grantown Avenue, Airdrie, ML6 8HH ("the Property")

Parties

**Mr Brian McIntosh, Miss Elaine Campbell (Applicant)
Mr John Robertson, Mrs Diane Robertson (Respondent)**

McGoogans (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 66 on 6 October 2022. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**.

2. The application was considered by the Tribunal and further information was requested by letter of 9 November and 16 December 2022 in the following terms.

"Before a decision can be made, we need you to provide us with the following: 1. The application states that the eviction ground is that the landlord intends to sell. This is not a valid eviction ground in terms of the Housing (Scotland) Act 1988. Please amend your application to give a valid and relevant eviction ground. This should be the same eviction ground as the ground given in the AT6. 2. We also note that the AT6 you have

provided refers to ground 10 where the tenant has given notice to quit and has not vacated the property. It appears that you may have misunderstood the grounds for eviction and you are referring to you giving the tenant notice (which would mean that ground 10 would not apply) rather than a situation where your tenant has given you a notice to quit. If your tenant has not given you a notice to quit you may wish to withdraw the application and serve the notices again. If your tenant has given you a notice to quit please provide this for our further consideration. 3. Please provide a copy of any notice to quit you have served on the tenant with proof of service. Your application refers to a notice to quit but you have given us a s33 notice and an AT6, not a notice to quit. A notice to quit should tie in with the ish date which is 18 August. 4. Please provide the s11 notice on the local authority and proof of service of this. Please note that you may wish to consider withdrawing the application and reserving the appropriate notices. If you are unable to provide a valid AT6 and notice to quit it is likely the application will be rejected. You may also wish to consider seeking independent legal advice in connection with the application. Please reply to this office with the necessary information by 23 November 2022. If we do not hear from you within this time, the President may decide to reject the application."

3. No response was received.

Reasons for Decision

4. 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."

5. '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*".

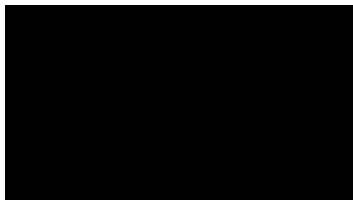
6. The application seeks to proceed under Rule 66 and section 33 of the Act. Rule 66 provides for certain information to be produced in support of the application.

The Applicant has been unable to provide the information requested by the Tribunal.

7. 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.



24 January 2023

Legal Member/Chair

Date