

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION
STATEMENT
REASONS**

**LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**AND
OF
BY THE**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 ("the Procedural Rules")

in connection with

**14 Alwyn Avenue, Houston, PA6 7LH
the Property**

Case Reference: FTS/HPC/EV/19/3382

The Parties:-

Spratt Properties Ltd, c/o 440 Helen Street, Glasgow G51 3HR

Applicant;

Lind Letting Ltd, c/o 1 Kirkinner Place, Main Street, Bridge of Weir, PA11 3AA

The Applicant's Representative and

**Mr David Callaghan and Mrs Leisa Callaghan both residing at 14 Alwyn Avenue,
Houston, PA6 7LH**

Respondents

Background

1. By Application sent between 21st October 2019 and 3rd December 2019 the Applicant applied to the Tribunal under Rule 109 of the Procedural Rules for an order for an Eviction Order.
2. In terms of Rule 8 of the Procedural Rules the Legal Member of the Tribunal, under the delegated powers of the Chamber President, considered whether or not there were grounds to reject the Application. The Legal Member determined to reject the Application on the basis that he had good reason to believe that it is frivolous under Rule 8(1)(a) of the Procedural Rules.

Reasons for Decision

3. The Legal Member considered the Application papers which were lodged and, in particular, noted that neither the Applicant nor their Representative have confirmed all of the information sought in the Tribunal's letters dated 14th November, 3rd December and 20th December 2019.
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*". It is that definition which the Legal Member had to consider in this Application in order to determine whether or not this Application is frivolous, misconceived, and has no prospect of success.
5. The Applicant and their Representative have not confirmed all of the information sought in the Tribunal's letters dated 14th November, 3rd December and 20th December 2019. The Tribunal is unable to determine the Application without receipt of the information sought. Therefore the Legal Member has determined that the Application, in its current form, has no prospect of success.
6. Accordingly, having regard to the aforementioned test in *R v North West Suffolk (Mildenhall) Magistrates Court*, the Legal Member has concluded that the current Application is frivolous and has rejected it under Rule 8(1)(a) of the Procedure Regulations.

Decision

7. The Legal Member, with delegated authority from the Chamber President, determined to reject the Application as being frivolous in terms of Rule 8(1)(a) of the Procedure Regulations.

G McWilliams

16th January 2020
Legal Member

What you should do now

If you accept the Legal Member's decision, there is no need to reply.
If you disagree with this decision:-

A party aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded on request.

