

**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/19/2590**

**Re: 1 Sutherland Crescent, Bathgate, EH48 1EB ("the Property")**

**Parties:**

**James Stein McDonald ("the Applicant")**

**Esther Abiola Idowu ("the 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 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 65 on 19 August 2019. The grounds for possession/eviction were stated to be Ground 11 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:
  - (i) Assured Tenancy (**AT**) commencing 8 June 2018.
2. The application was considered by the Tribunal and further information was requested by email of 20 August 2019. The Applicant was asked:

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- (a) To provide the appropriate AT6;
- (b) To provide a copy notice to quit;
- (c) Evidence that the grounds have been met; and
- (d) Copy section 11 Notice.

The Applicant was given until 27 August 2019 to respond failing which the application may be rejected.

3. The Applicant responded by email of 22 August 2019 with a copy AT6 dated 15 July 2019 which specified Ground 11 of the Act as the ground for repossession; copy Notice to Quit dated 1 July 2019 which specified 31 July 2019 as the date to quit; rent statements; arrears repayment agreement; letter from West Lothian Council and letter from Applicant addressed to whom it may concern.

4. The application was considered again by a Legal Member on 4 September 2019 and the Applicant was requested to provide the following by letter of 5 September;

- (i) The tenancy appeared to have been created after 1 December 2017 and would proceed under Rule 109 of the Tribunal Procedure Rules;
- (ii) To confirm if a Notice to Leave was issued and provide a copy;
- (iii) To confirm the joint owner was aware of the tenancy and consents to the application.

The Applicant was given until 19 September 2019 to respond failing which the application may be rejected.

5. The Applicant responded by email of 19 September 2019 enclosing (1) a letter of 30 June 2019 entitled Notice to Leave which did not comply with the statutory format, did not specify the grounds for recovery of possession under Schedule 3 of the 2016 Act and did not give notice; and (2) a Notice to Leave which did not comply with the statutory format, was dated 15 September 2019 and stated that the tenant should leave by 15 August 2019.

### **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."*

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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. The application seeks to proceed under Rule 65. The tenancy was created after 1 December 2019 and was clearly not an assured tenancy. It was a Private Residential Tenancy under the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**. The Notice to Leave required under the Act was not valid given that it was defective in form and was signed and dated after the date to leave. It did not specify the ground(s) under the Act.
9. 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. In the absence of a valid notice to leave the Tribunal cannot grant the order sought. 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

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Legal Member/Chair

7 October 2019  
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Date