



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/20/1786

Re: 51 Main Street, Carnwath, ML11 8JU ("the Property")

Parties

**C A J Property Investments Ltd. (Applicant)
Mr Stuart Hill (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 109 on 10 August 2020.
2. The application was considered by the Tribunal and further information was requested by letter of 7 September 2020. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following:

1. Please submit an amended Application as follows:

a. Section 3, amended details for Applicant's Representative. The Applicant's Representative cannot be the same as the Applicant. Please revise the details. If there is no Applicant's Representative please delete the details;

b. Section 5, which makes reference to the ground upon which the Respondent's eviction is sought with reference to the Private Housing (Tenancies)(Scotland) Act 2016, Schedule 3; and

c. Section 6, which lists the documents produced in support of the Application, with reference to Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and the list of documents required, below.

2. Please provide the following documents:

a. Evidence showing that the eviction grounds has been met, for example a rent statement showing the rent due, rent paid by the Respondent and a running total showing rent arrears over three consecutive months;

b. A copy of the Notice to Leave issued to the Respondent in terms of section 52(3) of the 2016; with any attachments issued with it and proof of service on the Respondent by the method specified in the tenancy agreement and/or in accordance with the 2016 Act; and

c. A copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; with proof of service.

3. Please produce written authority from the registered proprietor of the property, CAJ PROPERTY INVESTMENTS LIMITED, authorising Charles Jenkins to enter into a tenancy agreement for the Property with the Respondent.

Please reply to this office with the necessary information by 21 September 2020. If we do not hear from you within this time, the President may decide to reject the application."

3. The information was not received. The application was considered by the Tribunal and the Tribunal wrote by letter of 12 October 2020 requesting further information as follows:

"Please respond to the further information requested on 7th September 2020.

Please reply to this office with the necessary information by 26 October 2020. If we do not hear from you within this time, the President may decide to reject the application."

4. No response was received.

Reasons for Decision

5. 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."

6. '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"*.

7. Rule 109 of the Tribunal Rules requires the following information to be provided in any application:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction ground or grounds has been met;

(ii)a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c)be signed and dated by the landlord or a representative of the landlord.

The applicant failed to produce evidence to support the application that had been requested. The application could not proceed.

8. 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.

A.S

13 November 2020

Legal Member/Chair

Date