

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/CV/21/1195

Re: 1 Bearehill Loan, Brechin, DD9 6XG ("the Property")

Parties

Mrs Moira Wallace (Applicant)

Mr Barry Thomson (Respondent)

Shiells Solicitors (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 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 111 on 18 May 2021.
2. The application was considered by the Tribunal and further information was requested by letter of 1 June 2021. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following: 1. Please amend the application a. It should be brought under rule number 109, not 111; and b. It requires to be made on a Form E (not a Form F). Please submit a duly completed Form E. 2. Please provide evidence of the ground that you are relying on, Evidence tending to show that the landlord has the intention mentioned in ground 1

includes (for example)— (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property, (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market. 3. Please provide a copy of the section 11 notice which requires to be sent to the local authority together with evidence of service. 4. Please provide a copy of the tenancy agreement. Please reply to this office with the necessary information by 15 June 2021. If we do not hear from you within this time, the President may decide to reject the application.”

3. No response was received. The Tribunal wrote again on 28 June 2021 in the following terms:

“Before a decision can be made, we need you to provide us with the following: 1. Please provide the information requested by the Tribunal in their letter to you of 1 June 2021. Please reply to this office with the necessary information by 12 July 2021. If we do not hear from you within this time, the President may decide to reject the application.”

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 Applicant failed to provide necessary information to the Tribunal. The Tribunal could not grant the order sought.

7. 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.

Alan Strain

23 July 2021

Legal Member/Chair

Date