



**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/22/4345**

**Re: 116F Buttars Loan, Charleston, Dundee, DD2 4QA ("the Property")**

### **Parties**

**Miss Natalie Beattie (Applicant)  
Ms Cindy Kenny (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 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 7 December 2022. The Applicant produce a short assured tenancy agreement (**SAT**) which ran from the initial period of 1 August 2017 to 1 February 2018 and monthly thereafter.

2. The application was considered by the Tribunal and further information was requested by email of 23 January 2023 as follows:

"An explanation of the legal basis upon which you assert that 31st December is an ish date of the lease in circumstances where the lease appears to have had an ish date of 1st February 2018 unless the lease was not brought to an end by the parties in which case it continued on a monthly basis. That would appear to indicate that the ish date of the lease, which requires to be correctly stated in the notice to quit, is the 1st day of each month."

3. The Applicant responded by email of 3 February 2023 in the following term:

"I sought advice and the same time I received the forms from Donald Graham, enforcement officer at the private sector in Dundee city council. the advice was since the initial 6 months lease had passed it was now on a month to month basis and to serve the notice to quit with the date of 31st of the month so that a new month to month basis didn't come into affect on the 1<sup>st</sup>"

## 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. In order to do so the tenancy must have been validly constituted as a short assured tenancy and terminated at its ish. The Notice to Quit did not specify a date to quit at an ish date of the SAT.

The tenancy has not been validly terminated and continues. As the tenancy has not been terminated the Tribunal cannot grant the order sought. The Tribunal has no discretion in the matter.

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.**

**Alan Strain**

**21 February 2023**

---

**Legal Member/Chair**

---

**Date**