



**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/20/1571**

**Re: 48A Sighthill Crescent, Edinburgh, EH11 4QD ("the Property")**

### **Parties**

**Kemp & Kimbell (Applicant)  
Ms Kerriann Kerr (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 23 July 2020.
2. The application was considered by the Tribunal and further information was requested by email of 20 August 2020. The Applicant was asked to:

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

- *Please provide proof of service of the section 11 Notice on the local authority*
- *Please provide proof of service of the Notice to Quit on the Respondent*
- *Please provide a copy of the section 33 Notice and proof of service on the Respondent if Rule 66 is to be relied upon*
- *Please confirm if the application is to proceed under Rule 66 (Termination of a Short Assured Tenancy under section 33 of the Housing (Scotland) Act 1988) or some other Ground if it is to proceed under Rule 65*

• *The Notice to Quit states that the Respondent should quit the Property on 7 May 2020. The tenancy agreement is continuing month to month on the 9th day of each month. The tenancy must be ended on the 9th day of a month. The Notice to Quit appears therefor to be invalid. Please provide your written submissions on whether the Notice to Quit is invalid or not.*

*Please reply to this office with the necessary information by 3 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 10 September 2020 requesting further information as follows:

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

• *We have received no response to further information request issued 20 August 2020. Please provide a response to the enclosed letter.*

*Please reply to this office with the necessary information by 24 September 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 65 provides for certain information to be supplied with an application:

## **Application for order for possession in relation to assured tenancies**

**65.** Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 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 possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b) be accompanied by—

(i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and

(iv) evidence as the applicant has that the possession ground or grounds has been met; ...

(v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and

(vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), 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.

Alan Strain



12 October 2020

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Legal Member/Chair

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Date