

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/PR/20/0464

Re: 25 The Square, Ellon, Aberdeenshire, AB41 9JB ("the Property")

Parties

**Mr Alexander Howells (Applicant)
Mrs Melanie Bruce (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 dated 3 March 2020 was received by the Tribunal under Rule 110. The application was in respect of an alleged wrongful termination without eviction order under the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**.

2. The application was considered by the Tribunal on 25 February 2020. The Tribunal wrote to the Applicant on the same date requesting further information as follows:

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

- Please provide an address for the Respondent. The address you have provided is for the letting agency. Alternatively please provide written confirmation from the letting agency that they will accept service of the case raised by you to the Tribunal and whether they are acting as Respondent Representative.*

- *You have detailed in your application that you wish advice from the Tribunal regarding several matters. You should note that the Tribunal is unable to provide any legal advice. This can be sought from several areas –including, solicitors citizens advice or rights offices, Shelter etc.*
- *There are several aspects included in your application which seem to relate to an action for payment by you against the Respondent. If so these matters should form the basis of a separate application to the Tribunal under Rule 111. Do you wish to make a second application to deal with these issues? Please confirm.*
- *Please clarify why you say you were misled into ceasing to occupy the let property in terms of section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016.*

*Please reply to this office with the necessary information by **10 March 2020**. If we do not hear from you within this time, the President may decide to reject the application.”*

No response was received. The Tribunal wrote again on 28 July 2020 in the following terms:

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

A further information request was issued by the Tribunal on 25th February 2020. No response has been received. Please reply to this office with the necessary information by 11 August 2020. If we do not hear from you within this time, the President may decide to reject the application. “

Reasons for Decision

3. 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."

4. '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”.*

5. The application seeks to proceed under Rule 110. This Rule provides that:

“Application for a wrongful termination order

110. Where a former tenant makes an application under section 57(2) (wrongful termination by eviction order) or section 58(2) (wrongful termination without eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name and address of the former tenant;

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

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

(b)be accompanied by evidence showing that the tenancy was unlawfully terminated; and

(c)be signed and dated by the former tenant or a representative of the former tenant.”

The Tribunal has requested information required in support of the application under Rule 110. The Applicant has failed to provide the information requested. In particular, the Applicant has failed to confirm the address of the Respondent and to produce evidence in support of his alleged unlawful eviction.

The Tribunal cannot grant the order sought without this information.

6. 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

1 September 2020

Legal Member/Chair

Date