



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/23/1653

Re: 112 2/2 Calder Street, Glasgow, G42 7RB ("the Property")

Parties

Daytona Avante Ltd (Applicant)

Mr Michael Freeman (Respondent)

Landlord Agents (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.

Background

1. The application was received by the Tribunal under Rule 109 on 23 May 2023.
2. The application was considered by the Tribunal on 4 September 2023. The Tribunal wrote to the Applicant's Representative in the following terms:

"Before a decision can be made, we need you to provide us with the following: 1. Please provide a copy of the tenancy agreement. 2. Given that the Applicant is a limited company, please provide your submissions on the competence of proceeding on the basis of ground 5."

The Applicant's Representative responded by email of 30 October 2023 in the following terms:

"With regards to ground 5, I am not aware of any part of the 2016 act that prevents a property managed by a Ltd company, to allowing a family member of the person with significant control moving in to occupy as their principal home."

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 109 and Ground 5 of the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**. The Applicant is a limited company. It cannot have qualifying family members under the Act. The application is incompetent.

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. 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.



17 November 2023

Legal Member/Chair

Date