



**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/TE/24/0256**

**Re: Tir-Nan-Og, Quarry, Glenelg, IV40 8JT ("the Property")**

**Parties**

**Mr Callum Alden (Applicant)**

**Ms Elaine Turnbull (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.**

**Background**

1. The application was received by the Tribunal under Rule 106 and Section 14 (2) of the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)** on 17 January 2024. The Applicant asked the Tribunal to draw up the terms of the tenancy under section 15 as he considered that the written terms of the tenancy purport to displace a statutory term in an unlawful manner.

2. The application was considered by the Tribunal on 18 January 2024. The Tribunal wrote to the Applicant in the following terms:

"Thank you for your applications under Rules 105, 106 and 107 which have been passed to a legal member with delegated authority of the Tribunal President and who has asked for the following further information:- 1. You have stated that your contact

address is c/o Dr Jennifer Francis, Coullindoune, Glenelg, whereas the Property address is Tir-Nan-Og, Quarry, Glenelg. As applications under Section 14 and 16 can only be made while the tenancy is ongoing please explain if you are still living at the tenancy and if not is the tenancy still continuing and are you staying elsewhere? Please also note the Tribunal cannot accept a care of address as a valid address. 2. With respect to TE/240254 which is an application under S14(1) of the 2016 Act and application TE/24/0256 which is an application to draw up terms where statutory terms have been displaced, please advise which you think has happened in this case as it appears you are claiming both? Please clarify your position? 3. The notice period for notices sent to the landlord in terms of S14 and s16 of the 2016 Act is set out in S17 of the Act and states that the notice period expires on the day falling 28 days after it begins, and it begins on the later of the day that the landlord receives notice from the tenant of the tenant's intention to make the application in question, (which is in these cases 22nd January ) or the day after the deadline by which the landlord should have performed the duty in question. Please advise if a date was given to the landlord by which they were required to produced the terms of the tenancy and if so what that date was? In any event the landlord appears to have received notification of the intention to raise these actions on 22nd December 2023 and so the notice period would end at the earliest on 19th January. It would appear therefore that the required 28 days of notice has not been given. Please let us have your comments on this and the validity of the application? Please reply to this office with the necessary information by 1 February 2024. If we do not hear from you within this time, the President may decide to reject the application.”

The Applicant responded by email of 18 January 2024 in the following terms:

“1. I am still living at the tenancy at Tir-Nan-Og, Quarry. Glenelg. IV408JT. I understand that if/when my situation changes the tribunal will not accept a 'care of' address. Can you advise what address the tribunal might accept should my landlord evict me, as she has implied she will do this (in an unofficial manner citing her requirement to sell the property), should I be evicted where I should state my address? I would technically be homeless. 2. It does appear I have misunderstood my eligibility for an application under Section 14(2) of the 2016 Act. Might it be possible to retract application FTS/HPC/TE/24/0256? Reason being; my landlord has not provided the statutory tenancy agreement, therefore no statutory terms have in fact been displaced. That's my layman's understanding. Please provide the requisite withdrawal form referenced under Rule 15(2) The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 "The Rules". Apologies for my misunderstanding. 3. Thank you for providing clarity regarding the valid notice period, it does seem I misunderstood the applicable submission date as I had been consulting the 'Guidance Notes' which I now understand do not contain relevant information about submitting the application. Apologies again for my misunderstanding. Thank you for highlighting S17 of the Act and your clear explanation. It does appear I have invalidated these applications, I agree with your calculation, that 19th of January 2024 appears the earliest date at which I should have submitted the applications based on your citation and given the unforeseen delay in postage. I do intend to allow my landlord the complete notice period as per S17 of the Act. You ask me to state whether a date was given to the landlord by which they were required to produce the terms of the tenancy. I believe I have done this. I wrote to my landlord on 15th of December 2023 wherein I explained "You must

provide a complete tenancy agreement including relevant notes within 28 days". Moreover, I enclosed the notice titled 'APPLICATION BY A TENANT TO THE FIRST-TIER TRIBUNAL', in that notice I stated the earliest date I might make an application to the Tribunal would be 16th January 2024. To calculate this date I included an additional 48 hours to mitigate any delay in postage. I took direction from the 'Guidance Notes' provided through the website of the Scottish Government. I believed this was valid. Nevertheless, it would appear that these applications are invalid as they should only have been submitted as of the 19th January 2024. Again, might it be possible to furnish me with the withdrawal form mentioned under Rule 15(2). Can you confirm whether this may be submitted via email? I am truly sorry if this has wasted any of your time, I do intend to carefully consider any future application made. This is my first interaction with the legal system and I did not intend to make any invalid application."

The Tribunal wrote again to the Applicant on 20 February 2024 in the following terms:

"Your applications has been further reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters: The tribunal acknowledges receipt of your email of 18 January in response to its request to you for further information of the same date. It is noted that you seem to accept that you have not provided the sufficient period of notice to your landlord as required in terms of section 17 of the Private Housing (Tenancies) (Scotland) Act 2016. You indicate that you now believe that your applications are invalid and that you wish to seek to withdraw them. You have asked the tribunal to furnish you with the withdrawal form mentioned in rule 15(2) of the tribunal rules. There is no specific form. However, the tribunal is also happy to accept a request for withdrawal in any written form. The tribunal also acknowledges your subsequent email dated 30 January 2024, in which you indicate that your landlord has now sent you an eviction notice. The tribunal cannot provide you with any advice in respect of that notice as the tribunal is an independent judicial body and cannot provide you such advice or guidance. The tribunal would respectfully suggest that you may wish to seek independent legal advice on the potential impact of that notice and any subsequent tribunal proceedings which your landlord may upon the expiry of the notice. Please reply to this office with the necessary information by 5 March 2024. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number."

The Applicant responded by email of 20 February 2024 stating that he did not wish to withdraw the applications.

### **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 106 and Section 14 (2) of the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**. The Applicant has accepted in his email to the Tribunal of 18 January 2024 that no statutory terms have been displaced.

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 as no statutory terms have been displaced. 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.

# A Strain

14 March 2024

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Legal Member/Chair

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Date