

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/24/3868**

**Parties**

**Mr Brian Colborn (Applicant)**

**Mr William Laidlaw (Respondent)**

**70 Windsor Road, Falkirk, FK1 5EJ (House)**

**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.**

**Background**

1. The application was received by the Tribunal under Rule 109 on 21 August 2024. The Grounds for recovery of possession were stated to be Ground 1 under the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**.

*Further Information Request*

2. The application was considered by the Tribunal and further information was requested from the Applicant's Representative by email of 24 September 2024:

*"The in-house convenor has reviewed the eviction application. To enable it to be considered further please respond to the following within 14 days:*

*1. There are two owners to the property. Please either amend the application to include the second owner or provide her written authorisation to the application proceeding in your sole name.*

*2. There are two tenants on the tenancy agreement and you have stated in your application that the respondent has breached the tenancy agreement by the "break up of the joint tenancy". Please clarify this statement.*

*3. Please provide a copy of the notice to leave on the second tenant and proof of service of the notice to leave. Alternatively please withdraw the application and re-serve the notices on both tenants.*

*4. Please provide your submission on the validity of service of the notice to leave as the tenancy agreement provides for service of notices by email. Please provide full details of where and when the notice was hand delivered and by whom.*

*Please reply to this office with the necessary information by 8 October 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 24 September 2024 stating:

*"1. I have forwarded an e-mail from my wife (joint owner) confirming she is happy for me to proceed in my name only*

*2. There are 2 tenants on the tenancy agreement but the tenants relationship ended in December 2023 and she (Michelle Chalmers) left the property, 70 Windsor Road and my understanding is that she stays with various friends and I have no knowledge of her address. This is why the eviction notice is in the second tenants name (William Laidlaw) only. I trust that this information explains as to why I made the statement that "the tenancy agreement had been broken)*

*3. There has only been one notice served, that being to William Laidlaw as he is the only tenant in the property and has been since December 2023. The proof of delivery as is previously stated and to William Laidlaw*

*4. As previously stated the notice was hand delivered to the property on 12th May 2024 giving the statutory 84 day notice. I have supplied all other information pertaining to this 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. Rule 109 of the Tribunal Procedure Rules provides:

**Application for an eviction order**

**109.** Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 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 (if known); and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction ground or grounds has been met;

(ii)a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(iv)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.

### *Valid Notice to Leave not served on both tenants*

The Applicant has not served the Notice to Leave on both tenants. He states that he does not have an address for the second tenant. He has hand delivered the Notice to Leave to the Respondent.

The tenancy agreement entered into between the Parties commencing 11 April 2021 provides for service by email only (Clause 3 (a)). The Applicant has not explained why he did not serve both Notices by email as contractually required. No valid Notice to Leave has been served on the tenants in terms of the tenancy.

The application cannot succeed.

5. 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.**

# Alan Strain

29 October 2024

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Legal Member/Chair

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Date