



**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/20/0099**

**Re: 10A Thornton Road, Kirkmuirhill, ML11 9QE ("the Property")**

### **Parties**

**William Davidson Plumbers Ltd (Applicant)  
Mr Christopher Tansey (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 109 on 15 January 2020. The grounds for possession/eviction were stated to be Ground 12. The following documents were enclosed with the application:
  - (i) Notice to Leave dated 20 November 2019;
  - (ii) Rent Statement dated 30 December 2019.
2. The application was considered by the Tribunal and further information was requested by letter of 15 January 2020. The Applicant was asked to provide the following further information:
  - A COPY OF THE NOTICE GIVEN TO THE LOCAL AUTHORITY AS REQUIRED UNDER SECTION 56(1) OF THE 2016 ACT

- EVIDENCE THAT THE NOTICE TO THE LOCAL AUTHORITY UNDER SECTION 56(1) OF THE 2016 ACT HAS BEEN SERVED TO THE LOCAL AUTHORITY

**Please reply to this office with the necessary information by 22 January 2020, otherwise the application may be rejected.**

3. No response was received. The application was considered again by the Tribunal on 5 February 2020. The Tribunal wrote to the Applicant by letter of 5 February 2020 asking for the following information:

*“We refer to our letter of 15 January to which we do not appear to have received a reply. Your application cannot proceed further until we receive a copy of the documents requested namely a copy of the Notice to the local authority of your intention to raise proceedings ( a Notice under Section 11(30) of the Homelessness etc. (Scotland) Act 2003 together with a copy of the letter or email to the local authority enclosing the notice.*

*We have also noted that you have not provided a copy of the Tenancy Agreement. This is required.*

*Please also provide confirmation of the method of delivery of the Notice to Leave with appropriate documentary evidence such as proof of delivery if by recorded delivery, a Certificate of Service if by Sheriff Officers or copy email if sent by email.*

*Finally we note that title to the property is held in the name of James Alexander Davidson and James Davidson is the Registered Landlord but the application names the Applicant as William Davidson Plumbers Limited. Please provide an explanation for the company being named as the Applicant.*

*Please provide the information and documents requested within the next fourteen days failing which your application may be rejected.*

*Please reply to this office with the necessary information by 19 February 2020. If we do not hear from you within this time, the President may decide to reject the application.”*

4. No response was received. The Tribunal wrote to the Applicant again of 11 March 2020 and asked for a response to the request for information within 14 days. No response was received. The Tribunal wrote to the Applicant again on 29 July 2020 in the following terms:

*“I refer to your application which has been referred to the Chamber President for consideration. We are unable to trace a response to our previous requests for further information, one such request is attached for your information. We require this information before a decision can be made. Please reply to this office with the necessary information by 12 August 2020. If we do not hear from you within this time, the President may decide to reject the application.”*

5. No response was received.

## Reasons for Decision

6. 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."*

7. '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".*

8. No Section 11 Notice, proof of service of the same or proof of service of the Notice to Leave had been produced. The Tribunal could not grant the order sought without the documentation that had been requested.

9. 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

31 August 2020

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Legal Member/Chair

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Date