



**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/19/1549**

**Re: 79 Dalriada Crescent, Motherwell, North Lanarkshire, ML1 3XT ("the Property")**

**Parties:**

**AMPG Ltd T/A Ahuja Holdings ("the Applicant")**

**RJM Property Services Limited ("Applicant's Representatives")**

**Mr Bartek Wolszczak ("the 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 65 on 22 May 2019. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:
  - (i) Assured Tenancy (**AT**) commencing 25 September 2017 for an initial period of 6 months and month to month thereafter;

- (ii) AT5 dated 16 September 2017;
- (iii) Notice to Leave dated 28 January 2019;
- (iv) Schedule of Rent Arrears;
- (v) Section 11 Notice to North Lanarkshire Council;
- (vi) Royal Mail RD slip.

2. The application was considered by the Tribunal and further information was requested by email of 17 June 2019. The Applicant's Representatives were asked:

- (a) To provide the appropriate AT6 or explain why the tenancy created was in fact a Private Residential Tenancy and not an Assured Tenancy;
- (b) To provide evidence of service of the AT6 and copy notice to quit.

The Applicant's Representatives were given until 1 July 2019 to respond failing which the application may be rejected.

3. The Applicant's Representatives responded with a copy AT6 dated 29 January 2019 which specified Ground 8 of the Act as the ground for repossession; copy Notice to Quit dated 29 January 2019 which specified 29 March 2019 as the date to quit and section 33 Notice dated 29 January 2019 which specified 29 March 2019 as the date of termination.

4. The application was considered again by a Legal member on 17 July 2019 and the Applicant's Representatives were requested to comment on the competency of the Notice to Quit as the removal date did not coincide with the ish date of the lease and proof of service of the notices.

The Applicant's Representatives were given until 31 July 2019 to respond failing which the application may be rejected.

5. No response was received and the Tribunal wrote again on 19 August 2019 and gave until 2 September 2019 to respond. 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. The application seeks to proceed under Rule 65. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. No proof of service of the Notice to Quit has been produced and the date to remove does not coincide with the ish of the lease. The lease has not been validly terminated.
9. Further the lease does not expressly incorporate the Grounds within Schedule 5 to the Act as a basis for termination/recovery of possession. Service of an AT6 alone would be insufficient to enable the grant of an order to repossess the Property.
10. In light of the above reasons the Tribunal cannot grant the order sought. 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 Applicant has failed to provide necessary information requested within a reasonable time. 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**

**19 September 2019**

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Legal Member/Chair

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Date