

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/1910

Re: 7 Netherthird Place, Cumnock, Ayrshire, KA18 2BS("the Property")

Parties:

Mr Jordan Thomson ("the Applicant")

Mr William Strain ("Applicant's Representatives")

Mr Jordan Hunter, Mr Mickey Lee Mayo ("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 109 on 19 June 2019. The grounds for possession/eviction were Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (Act). The following documents were provided:
 - (i) Private Residential Tenancy Agreement (PRTA) commencing 1 September 2018;
 - (ii) Notice to Leave for both tenants dated 1 March 2019;

A Strain

- (iii) Letter of authorisation for Mr Strain to act for owner dated 29 July 2019;
- (iv) Section 11 Notice.

2. The application was considered by the Tribunal and further information was requested by letter of 14 August 2019. The Applicant's Representative was asked:

- (a) To provide proof of service of the Notices to Leave.

The Applicant's Representative was given until 28 August 2019 to respond failing which the application may be rejected.

3. The Applicant's Representative responded by email of 16 August 2019 and informed the Tribunal that the Notices to Leave were hand delivered by him and his partner.

4. The Tribunal considered the application and wrote requesting further information by letter dated 2 September 2019. The Applicant's Representative was asked:

- (a) To provide a complete copy of the PRTA;
- (b) To comment on the rent provisions of the PRTA which did not appear to state what the rent was and when it was payable;
- (c) To provide a rent statement.

The Applicant's representative was asked to provide the information by 9 September 2019 failing which the application may be rejected.

The Applicant's representative responded by email of 9 September stating that the agreed rent was £500 per month and stated the amount of the arrears.

5. The Tribunal considered the application and wrote requesting further information by letter dated 25 September 2019. The Applicant's Representative was asked:

- (a) To provide complete copies of the PRTA;
- (b) Rent Statements since commencement of the PRTA.

The Applicant's Representative was asked to provide the information by 9 October 2019 failing which the application may be rejected.

The Applicant's Representative responded by email of 9 October with a Rent payment ledger and copies of the PRTA.

6. The Tribunal considered the application and wrote requesting further information by letter dated 24 October 2019. The Applicant's Representative was asked:

- (a) To provide a full copy of the PRTA as only select pages had been produced.

The Applicant's Representative was asked to provide the information by 7 November 2019 failing which the application may be rejected.

A Strain

The Applicant's Representative responded by email of 15 November with copies of the PRTA.

7. The Tribunal considered the application and wrote requesting further information by letter dated 27 November 2019. The Applicant's Representative was asked:

- (a) To provide complete copies of the PRTA as these had not been provided;
- (b) To confirm the name of his partner and date when the Notices to Leave were hand delivered; and
- (c) Comments upon the validity of that method of service.

The Applicant's Representative was asked to provide the information by 11 December 2019 failing which the application may be rejected.

No response was received.

8. The application was considered again by a Legal member on 19 December 2019.

Reasons for Decision

9. 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."

10. '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".

11. The application seeks to proceed under Rule 109 and Ground 12 of Schedule 3 to the Act. No complete copy of the PRTA has been produced and proof of service of the Notices to Leave has not been provided. The Tribunal could not be satisfied that the Respondents had been served with Notice to Leave as required under section 52(3) of the 2016 Act. The Tribunal could not grant an order for recovery of possession/eviction in the circumstances.

A Strain

12. 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 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

19 December 2019

Legal Member/Chair

Date