



**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/22/1978**

**Re: 30 Ramsay Road, Kirkcaldy, Fife, KY1 1TZ ("the Property")**

### **Parties**

**Mr Peter O'Donnell (Applicant)**

**Miss Kate McNabb (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 June 2022.
2. The application was considered by the Tribunal and further information was requested by letters of 17 August 2022 and 3 October 2022. The Applicant was asked to:

*"Your application has been assessed by a legal member who has asked for the following information or documentation: 1. A copy of the Form AT6 served on the Respondent notifying her of the intention to raise proceedings for possession of the property. 2. A copy of the Notice to Quit served on the Respondent. 3. Evidence of service of the above two notices upon the Respondent. 4. As much information as you*

can provide regarding the tenancy agreement, including the start date and the duration of the tenancy, and the provisions for its continuation after the initial period. 5. A copy of the section 11 notice served on the local authority together with evidence of service of the notice. 6. Evidence to support the ground of eviction. In the event that you do not have the requested information, the application cannot proceed.”

3. The information was not received.

### **Reasons for Decision**

4. 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."*

5. '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"*.

6. Rule 65 provides for certain information to be supplied with an application:

#### **Application for order for possession in relation to assured tenancies**

**65.** Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 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; and

(iv)the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b)be accompanied by—

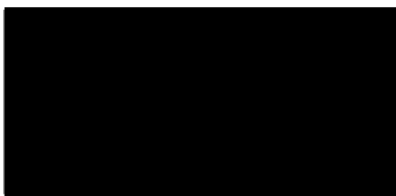
- (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
- (ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;
- (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and
- (iv) evidence as the applicant has that the possession ground or grounds has been met; ...
- (v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and
- (vi) 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.

The applicant failed to produce evidence to support the application that had been requested. The application could not proceed.

7. 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.**



**14 November 2022**

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**Legal Member/Chair**

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**Date**