



Decision with Statement of Reasons of H Forbes, 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/22/3280

Re: Flat 1/2, 51 Nursery Street, Glasgow, G41 2PL ("the Property")

Parties:

Sukvinder Virhia ("the Applicant")

Hadia Malik ("the Respondent")

Tribunal Member:

Ms H Forbes (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 form was received by the Tribunal under Rule 109 on 8th September 2022 with associated documents.
2. A letter informing the Applicant's representative that evidence showing the ground of eviction had been met was requested by letter dated 9th September 2022.
3. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant by letter dated 7th October 2022, requesting a response by 31st October 2022, failing which the application may be rejected, as follows:

Before a decision can be made, we need you to provide us with the following:

1. It is noted that there is a joint proprietor who is not an applicant. Please provide consent of the joint proprietor to make the present application.
2. Documentary evidence to demonstrate that the eviction ground is established

No response was received.

4. The application was considered by a legal member of the Tribunal and by letter dated 21st November 2022, a further opportunity to provide the information requested was given, with a response requested by 12th December 2022, failing which the application may be rejected. No response was received.
5. The application was considered by a legal member of the Tribunal and by letter dated 22nd December 2022, a further opportunity to provide the information requested was given, with a response requested by 29th December 2022, failing which the application may be rejected. No response was received.
6. The application was considered by a legal member on 12th January 2023.

Reasons for Decision

7. 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;

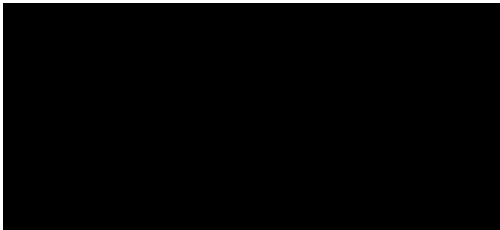
(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

8. '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"*.

9. Rule 109 provides that the application must be accompanied by evidence showing that the eviction ground or grounds are met. Without this, the application remains incomplete and cannot be accepted.
10. 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.



Legal Member/Chair

12th January 2023
Date