



**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/22/1136**

**Re: 148 Abernethy Road, Dundee, DD5 2PG ("the Property")**

**Parties:**

**Gillian McCreery ("the Applicant")**

**Jay Clark ("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. An application was received by the Tribunal under Rule 65 on 21<sup>st</sup> April 2022. The Applicant indicated she was seeking an order for payment.
2. The application was considered by a legal member of the Tribunal and further information was requested by letter dated 13<sup>th</sup> May 2022, with a response required by 27<sup>th</sup> May 2022, as follows:

Thank you for your application which mentions two of the Tribunal's rules rule 70 a civil application arising out of an assured tenancy and Rule 65 an application for an eviction in an assured tenancy.

With reference to the application under rule 70 which has reference number CV/22/1135 can you please provide the following further information:-

1. Please provide a copy of the tenancy application
2. Please provide a rent statement showing the rent due each month from when arrears started, rent paid each month and the running balance up to the end of the tenancy.
3. Please confirm the date of the end of the tenancy
4. Please confirm your right title and interest in raising this action when the property appears to be owned by a Mr Robbie Fox?
5. Please confirm your landlord registration number?

With regard to the application under rule 65 please advise if the reference to this rule has been made in error and you did not wish to apply for an order for eviction as you do mention the tenant has left? If not please in addition to the above items please provide AT5 notice, notice to quit and S33 notice with evidence of service and notice to the local authority in terms of s11 of the Homelessness etc. Scotland Act 2003 and evidence of service of it.

3. By email dated 19<sup>th</sup> May 2022, the Applicant replied as follows:

*I am gathering all the information needed for the above This property was mine until I sold it to Robbie fox last June The tenant was in from 2020-2021 He has never paid any monies only some UC I will forward proof of this and the rest of the documentation.*

4. The application was considered by a legal member of the Tribunal and by letter dated 13<sup>th</sup> June 2022, the Applicant was afforded an opportunity to ask for further time to submit the required information.
5. By email dated 14<sup>th</sup> July 2022, the Applicant requested further time to submit the required information.
6. The application was considered by a legal member of the Tribunal, and by email dated 14<sup>th</sup> July 2022, the Applicant was informed as follows:

You made two applications, one of which was made under rule 65, which would be an application for eviction. The information you provided does not indicate that you are seeking an eviction order but states that you seek a payment order. You have also not provided any of the further information/documentation in the request for further information from the Tribunal sent to you on 13 May 2022. The applications as they are at present would not be complete as they do not meet all the lodging requirements and in particular do not include a copy of the tenancy agreement or sufficient information to show the amount of rent due and the start and end date of the tenancy.

Please now provide the information requested by 29 July 2022, failing which the applications may have to be rejected.

7. The application was considered by a legal member of the Tribunal and a further request for the required information was made by letter dated 2<sup>nd</sup> September 2022, allowing a further 14 days to submit the information.

8. By email dated 8<sup>th</sup> October 2022, the Applicant stated:

*I'm Having trouble getting all the information together is there someone /a service that can help me pls?*

9. By email dated 11<sup>th</sup> October 2022, the Applicant was informed as follows:

Unfortunately, we are unable to provide you with any legal advice or guidance as we are a fair and impartial body. I can direct you to the relevant section of our website where you can find guidance.

<https://www.housingandpropertychamber.scot/apply-tribunal>

On the right hand side of this page, you will find a blue box 'In This Section' and below you will see Forms and Guidance and there you will be able to obtain the appropriate application form and guidance notes.

You may also find these contacts and links useful:

Shelter Scotland – 0808 800 444

Citizens Advice Bureau – [www.cas.org.uk](http://www.cas.org.uk)

Strathclyde Law Clinic – [www.lawclinic.org.uk](http://www.lawclinic.org.uk)

Govan Law Clinic – [www.govanlc.com](http://www.govanlc.com)

10. The application was considered by a legal member of the Tribunal and the required information was requested by letter dated 24<sup>th</sup> October 2022, with a response required by 31<sup>st</sup> October 2022. No response was received.

11. The application was considered further on 21<sup>st</sup> November 2022.

## **Reasons for Decision**

12. 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;*

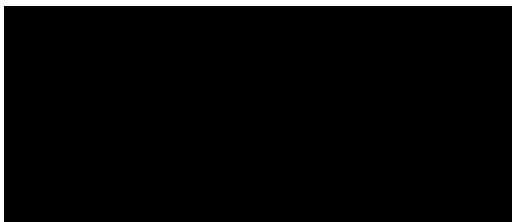
*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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.*

13. '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"*.
14. The application cannot proceed without an AT5 notice, notice to quit and S33 notice with evidence of service and notice to the local authority in terms of s11 of the Homelessness etc. Scotland Act 2003 and evidence of service of it. These documents are required in terms of the Tribunal regulations and relevant legislation.
15. 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. It would not be appropriate to accept the application. 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**

**21<sup>st</sup> November 2022**  
**Date**