



**Decision with Statement of Reasons of Helen 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/CV/22/0364**

**Parties:**

**Ms Rebecca Taylor ("the Applicant")**

**Mr Thomas Irving ("the Respondent")**

**Re: 35 Preston Road, Prestonpans, EH32 9HZ ("the Property")**

**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 was received by the Tribunal under Rule 111 on 8<sup>th</sup> February 2022. The Applicant was seeking an order for payment in the sum of £850 in respect of an unreturned tenancy deposit.
2. The application was considered by a legal member of the Tribunal and further information was requested by letter dated 15<sup>th</sup> February 2022, as follows, requesting a response by 1<sup>st</sup> March 2022:
  1. Please re-submit the application on the correct Form (Form F) which can be found on the Tribunal website.

2. Please provide a copy of the tenancy agreement and evidence of payment of the deposit. You may have already submitted these for the related application but they must be submitted again as this is a separate application.
3. Please provide a mandate authorising your representative to deal with the matter on your behalf.
3. By email dated 10<sup>th</sup> March 2022 the Applicant's representative requested further time for a response, citing health issues and hospital appointments as the reason for delay.
4. By email dated 16<sup>th</sup> March 2022, the Applicant's representative was provided with a further period to 29<sup>th</sup> March 2022 in order to provide the outstanding information. No response was received.
5. By email dated 21<sup>st</sup> April 2022, the Applicant's representative was provided with a further period to 28<sup>th</sup> April 2022 to provide the outstanding information. No response was received.
6. The application was considered by a legal member of the Tribunal on 19<sup>th</sup> May 2022.

## 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;*

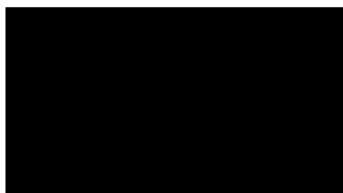
*(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph ( 1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."*

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. In the absence of the requested information from the Applicant, the application cannot proceed.
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 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.**



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**Legal Member/Chair**

**19 May 2022**

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**Date**