



**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/22/1904**

**Re: 32 McQuade Street, Bonnyrigg, EH19 3QG ("the Property")**

**Parties:**

**Nicola Klan ("the Applicant")**

**Key Contacts Letting Solutions ("the Applicant's representative")**

**Nicola Burgess ("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 16<sup>th</sup> June 2022. Although the application form stated that it was accompanied by the tenancy agreement and Notice to Leave, no documents were lodged.
2. By letter dated 20<sup>th</sup> June 2022, Administration staff informed the Applicant's representative that the application was incomplete, requesting the following:
  - Evidence showing that the eviction ground or grounds has been met.
  - A copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 act.

- A copy of the notice given to the local authority as required under section 56(1) of the 2016 act
3. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant's representative by email dated 20<sup>th</sup> July 2022, requesting a response by 3<sup>rd</sup> August 2022, failing which the application may be rejected, as follows:

Your application has been assessed by a legal member who has asked for the following documentation or information:

- A copy of the tenancy agreement.
- A copy of the Notice to Leave AND evidence that the notice has been served on the Respondent.
- A copy of the section 11 notice served upon the local authority AND evidence that the notice has been served on the local authority.
- Evidence to support the ground of eviction.
- Written authorisation from the Applicant authorising the representative to act on their behalf in this application.
- Please note that we have previously emailed the representative at the email address provided, and received no response. Please confirm the correct email address for the representative.

No response was received.

4. By letter dated 12<sup>th</sup> September 2022 sent to both the Applicant and the Applicant's representative, a further opportunity to provide the information requested was given, with a response requested by 26<sup>th</sup> September 2022, failing which the application may be rejected. The party was asked to inform the Tribunal if they no longer required an eviction order and wished to withdraw the application. No response was received.
5. The application was considered by a legal member on 3<sup>rd</sup> November 2022.

### **Reasons for Decision**

6. 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;*

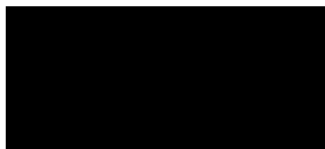
*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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."*

7. '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"*.
8. Rule 109 provides that the Applicant, when making an application, must provide a copy of the Notice to Leave, the section 11 notice and evidence showing the ground is met. By failing to provide these documents, the Applicant has failed to satisfy the requirements of Rule 109 and the application cannot be accepted.
9. 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.**



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Legal Member/Chair

3<sup>rd</sup> November 2022  
Date