



**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/22/2895**

**Re: 1 Whiteside Street, Rigside, Lanark, ML11 9ND ("the Property")**

**Parties:**

**Shazia Mehmood ("the Applicant")**

**Emma Beattie ("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 was received by the Tribunal under Rule 109 on 16<sup>th</sup> August 2022, with copy tenancy agreement, Notice to Leave and section 11 notice, with evidence of service of both.
2. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant's representative by letter dated 12<sup>th</sup> September 2022, requesting a response by 26<sup>th</sup> September 2022, failing which the application may be rejected, as follows:

Please clarify the Ground of eviction relied upon; the application states that the Applicant intends to sell the property. If that Ground is relied upon, please provide your comments on the validity of the Notice to Leave, which states that the Ground relied upon is Ground 5. If Ground

5 is relied upon, please provide an amended application along with any documentary evidence to demonstrate that the Ground is established.

Upon receipt of the above information, a final decision can then be taken on whether the eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this request within two weeks of the date of the letter. If you fail to respond to this letter then the tribunal may reject your application.

3. By email dated 12<sup>th</sup> September 2022, the Applicant's representative replied in the following terms:

*The landlord does intend to sell and if that fails she will put her son in the property.*

4. Further information was requested from the Applicant's representative by letter dated 17<sup>th</sup> October 2022, requesting a response by 31<sup>st</sup> October 2022, failing which the application may be rejected, as follows:

The Notice to Leave gives notice that the landlord's family member intends to live in the Let Property. The application states that the Applicant intends to sell the property. In your email of 12 September 2022 you advised that the Applicant intends to sell the property. The Tribunal asked for your comments on the validity of the Notice to Leave, which states that Ground 5 is relied upon. Please provide your detailed comments on whether you consider the Notice to Leave to be valid and if so, why.

Please provide this information within 14 days. Upon receipt of the above information, a final decision can then be taken on whether the eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application.

5. By email dated 17<sup>th</sup> October 2022, the Applicant's representative responded as follows:

*The owner has a family member going to live within the property until the property has been sold.*

6. Further information was requested from the Applicant's representative by letter dated 17<sup>th</sup> October 2022, requesting a response by 31<sup>st</sup> October 2022, failing which the application may be rejected, as follows:

If you are proceeding in relation to ground 5, a member of the landlord's family intends to live in the let property, please provide the following

1. An amended application form which refers to the correct ground.

2. Evidence of the eviction ground. This could be an affidavit or signed statement from the family member which confirms their intentions regarding the property.

If you are proceeding on ground 1, (whether this is in addition to or instead of ground 5) please also provide

1. A valid notice to leave which has been served on the Respondent on this ground, with evidence of service.

2. Evidence of the intention to sell

If you have not served a notice on ground 1 you can withdraw the application and re-submit it once a valid notice has been served. Alternatively, you can ask the Tribunal to allow you to amend the application to include this ground. Please note that a decision on this will not be made until the application has been served on the Respondent and they have had the opportunity to comment on any such request. If the Tribunal does not allow the amendment the application may be refused. You may wish to take legal advice before you respond.

No response was received.

7. By email dated 22<sup>nd</sup> December 2022, the Applicant's representative was provided with a further 14 days to respond to the letter or 16<sup>th</sup> November 2022. No response was received.

8. The application was considered by a legal member on 31<sup>st</sup> January 2023.

### **Reasons for Decision**

9. 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."*

10. '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"*.
11. The application cannot proceed in its current form, without clarification as to the ground on which the Applicant intends to proceed, and evidence showing that the ground has been met, as required by Rule 109 of the Procedural Rules. The Applicant has also failed to provide a valid Notice to Leave or make application to amend the application to include a ground that differs from the ground set out in the Notice to Leave.
12. 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.**

# Helen Forbes

Legal Member/Chair

— 31<sup>st</sup> January 2023  
Date