



**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/23/1383**

**Re: 185B St Michaels Street, Dumfries, DG1 2PP ("the Property")**

**Parties:**

**Executors of the Estate of the late Dilbagh Singh Athwall ("the Applicant")**

**Ms Tara Price ("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 2<sup>nd</sup> May 2023 with associated documents. The application was made under ground 12 of schedule 3 of The Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was considered by legal members of the Tribunal on several occasions and further information was requested from the Applicant representative in relation to various matters, including the fact that the application was made before the end of the notice period.
3. By email dated 28<sup>th</sup> July 2023, the Applicant representative provided an amended rent statement that showed the Respondent was not in three months' rent arrears at the time of service of the Notice to Leave on 2<sup>nd</sup> May 2023.

## Reasons for Decision

4. 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."*

5. '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"*.
6. The Notice to Leave in this case specifies a ground for eviction which was not satisfied as at the date of service, as the Respondent was not, at that time, in three months' arrears of rent. The Respondent fell into arrears with a missed rent payment on 16<sup>th</sup> February 2023. The Notice to Leave was served on 2<sup>nd</sup> May 2023. In order for the ground to apply, the tenant must have been in arrears for the specified period of time, not simply owing rent. That being the case, the Notice to Leave is invalid and the application must be dismissed.
7. Applying the test identified by Lord Justice Bingham in the case of *R v North West Suffolk (Mildenhall) Magistrates Court* 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.

# H Forbes

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Legal Member/Chair

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1<sup>st</sup> August 2023  
Date