



**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/21/2658**

**Re: 51 Castle Street, Hamilton, ML2 6BU ("the Property")**

**Parties:**

**Anthony McGrian, David McGrian, George McGrian ("the Applicant")**

**Jordan Fairbairn ("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 26<sup>th</sup> October 2021.
2. The application was considered by the Tribunal and further information was requested by email dated 18<sup>th</sup> November 2021, as follows:
  1. The title deeds show the property being owned by Martin McGraw and David McGraw. There is no reference to Antony or George McGraw in the title deeds. Any applicant who has the right and title to bring an application, can you please clarify in whose name this application should be brought. If the persons are not on the title deeds then you are required to provide evidence of their right and title to bring these proceedings.

2. In addition please provide evidence of George McGraw's right and title to grant a lease for the subjects.
3. Please advise if you have complied with the pre-action requirements in terms of Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, and provide evidence of compliance?
4. Please provide a complete copy of the notice to leave; the notice provided is incomplete.
5. Please also provide evidence of service of the notice to leave.
6. Please provide evidence of service of the section 11 notice.
7. Please provide landlord registration details.
8. Please provide a copy of the tenancy agreement
9. Please provide a rent statement, showing monthly rent due, monthly rent paid, monthly amount outstanding and cumulative total.

The Applicant was given until 2<sup>nd</sup> December 2021 to respond, failing which the application may be rejected.

3. By email dated 18<sup>th</sup> November 2021, the Applicant responded as follows:

On submitting application, the tenancy agreement and agreements from each member of the family was enclosed. This was an email from each party which provide permission for George McGraw to act on the behalf. I enclosed the email from Anthony, david and Martin McGRAW. George is the named applicant and the named landlord as three boys live abroad.

We have gained a court order for non-payment of rent which was granted in August first tier tribunal.

Please advise how the notice to leave is in complete?

4. The application was considered by a legal member and a further request for information sent out on 30<sup>th</sup> November 2021, requiring a response by 14<sup>th</sup> December 2021, requesting the following information, failing which the application may be rejected:
  - 1) Evidence to show service of the notice to leave on the Respondent.
  - 2) Evidence to show intimation of the section 11 notice on the local authority.
5. No response was received.

6. The application was considered further on 22<sup>nd</sup> December 2021. The information requested on 30<sup>th</sup> November 2021 was requested again, to be lodged within a period of 7 days, failing which the application may be rejected. No response was received.
7. The application was considered further on 24<sup>th</sup> January 2022.

### Reasons for Decision

8. 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."*

9. '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".*
10. The application cannot proceed as it stands without evidence of the Notice to Leave being served upon the Respondent, or evidence of the section 11 notice being made upon the local authority, as both require to be evidenced before an application can be accepted.
11. 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.**

**H. F**

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**Legal Member/Chair**

**24<sup>th</sup> January 2022**  
**Date**