



**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/EV/21/2280**

**Re: 35 Muir Street, Larkhall, ML9 2BQ ("the Property")**

**Parties:**

**Richard Duckett and Kerry Duckett ("the Applicant")**

**James Callen and Darren Joseph Gillespie ("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 21<sup>st</sup> September 2021. The ground under which the eviction order was sought was Ground 5. The following documents were provided:
  - (i) Notices to Leave with evidence of service
  - (ii) Section 11 Notice with evidence of service
  - (iii) Tenancy agreement between the parties
  - (iv) Affidavit of the Applicant
2. The Tribunal considered the application and wrote requesting an address for the Applicants by emails dated 14<sup>th</sup> October and 22<sup>nd</sup> November 2021.
3. By email dated 23<sup>rd</sup> November 2021, the Applicant responded to say the tenant had left the Property.

4. By email dated 24<sup>th</sup> November 2021, the Applicant was asked to confirm in writing whether the application was to be withdrawn in light of the information provided.
5. The Applicant has provided no further information and has not withdrawn the application.
6. The application was considered again by a Legal Member on 20<sup>th</sup> December 2021.

### 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. The application cannot proceed without an address for the Applicant or confirmation of whether the tenancy is now at an end.
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.**

Helen Forbes

Date: 20<sup>th</sup> December 2021

  
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**Legal Member/Chair**