



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.**

In respect of application in terms of rule 111 of the Rules made by Mr Kenneth Anderson, 'the applicant' against Mr Duncan McDonald as the respondent.

**Case reference FTS/HPC/CV/19/0372.**

**Decision**

At Glasgow on the 19 February 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(b) and (c) of the Rules.

1. This is an application in terms of rule 111 of the Rules. The application is dated 28 January 2019 and was received by the Tribunal on 5 February 2019.
2. The application was accompanied by the following copy documents:
  - a) Private residential tenancy agreement between the applicant and the tenants Mr Nicholas Green and Ms Katie Elizabeth Hayley Stark dated 1 February 2018.
  - b) Letter of Guarantee regarding proposed tenancy agreement for 5/1 Powderhall Rigg Edinburgh EH7 4GA, 'the property' signed by Mr Gavin Stark and Katie Stark on 29 January 2018.
  - c) Exchange of email by respondent to Broughton Property.
  - d) Broughton Property Management Guarantor Reference Supporting Application for Tenancy dated 29 January 2018.
  - e) Order for payment issued by First-tier Tribunal dated 22 November 2018.
  - f) Order for Eviction issued by First-tier Tribunal dated 22 November 2018.

g) Broughton Property Management Agency Agreement dated 9 August 2018. .

3. Rule 8 of the Rules provides:

*8-(1) The Chamber President or another member of the First-tier Tribunal under delegated powers of the chamber president, must reject an application if-*

- (a) they consider that the application is frivolous or vexatious;*
- (b) the dispute to which the application relates has been resolved;*
- (c) they have good reason to believe that it would not be appropriate to accept the application.*
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or,*
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, there have been no significant change in any material considerations since the identical or substantially similar application was made.*

*(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 this notification must state the reasons for the decision.*

**Reasons**

- 4. This application has been made in terms of rule 111. The tribunal has jurisdiction in terms of that rule and in terms of s71 of the Private Housing (Tenancies) Scotland Act 2016 in relation to civil proceedings arising out of a private residential tenancy, for example to recover rent arrears or to seek an order for money in respect of damage to property. The applicant in this case is a landlord in connection with a private residential tenancy. The respondent is however the guarantor and the application appears to arise out of a guarantee agreement whereby the respondent guaranteed the performance of one of the tenants in connection with the tenancy agreement.
- 5. I do not consider that this is a valid application in terms of rule 111 as, rather than the application arising out of a private residential tenancy, the application is in relation to a guarantee agreement, which is something quite different.
- 6. In *Sauchiehall Street Properties One Ltd-v- EMI Group Ltd*, 2015 Hous.L.R.24. the landlord of commercial premises in Glasgow sought payment from the guarantor of its tenant. The defenders pleaded that the court had no jurisdiction as the action did not have as its object the tenancy of immovable property. In accepting that argument Sheriff Reid states at paragraph 47;-

*"Firstly, the parties are not landlord and tenant. Instead the parties are creditor and debtor under a guarantee. Second, the aim or subject matter of the agreement in question (being the contract upon which the action is founded) is not a tenancy of immovable property at all. It is a guarantee. Thirdly, the object of the proceedings is not to enforce (or to seek*

*substantial redress for the alleged breach of ) an obligation owed to a landlord by a tenant under a lease but, rather, to enforce an obligation owed to a landlord by a third party debtor under a guarantee. In other words, the object of the proceedings is "only indirectly related " to a tenancy of immovable property, in that the guarantee relates to the obligations of a tenant under a lease. "*

7. I consider the circumstances of this case to be similar to the circumstances in connection with the application, albeit the application is in relation to a private residential tenancy rather than a commercial lease. The applicant is seeking to enforce the respondent's obligations under a guarantee.
8. I do not therefore consider it would be appropriate to accept the application in terms of rule 8(1)(c).
9. Further, I consider that the application should also be rejected in terms of rule 8(1)(a). Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if "*they consider that an application is vexatious or frivolous*".
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. For the reasons given above, the tribunal does not have jurisdiction to deal with this application as it arises out of a guarantee rather than a private residential tenancy. The application is misconceived and hopeless and has no reasonable prospect of success.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.