



Decision with Statement of Reasons of Alan Strain, 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/20/1358

Re: 10 Sinclair Drive, Oban, PA34 4DR ("the Property")

Parties

**Mr Anthony Howlett (Applicant)
Miss Frances Duff (Respondent)**

E Thornton & CO (Applicant's Representative)

Tribunal Member:

Alan Strain (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 on 18 June 2020.
2. The application was considered by the Tribunal and further information was requested by email of 2 September 2020. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following:

- **The legal member notes what you write in your recent email of 24 August 2020, and has agreed to provide your client with a further 4 week period in which try**

and resolve the issues you refer to in your email. The legal member asks that you update the tribunal at the end of the 4 week period to advise as to what further procedure you seek; including if further time to attend to issues is required; if any applications are to be withdrawn; or if they are to be continued, then please consider with your client how you would wish to deal these applications in view of there being a joint owner of the property; and the requirement for a rent statement.

Please reply to this office with the necessary information by **16 September 2020**. If we do not hear from you within this time, the President may decide to reject the application.”

3. The information was not received. The application was considered by the Tribunal and the Tribunal wrote by letter of 2 October 2020 requesting further information as follows:

“Before a decision can be made, we need you to provide us with the following:

- **We refer to our letter to you dated 2nd September 2020, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 14 days of this letter or the Tribunal may well reject your application.**

Please reply to this office with the necessary information by **16 October 2020**. If we do not hear from you within this time, the President may decide to reject the application.”

4. The Applicant’s Representatives wrote by email of 28 September 2020 requesting an extension of time within which to respond to the request for information. The extension of time was granted by email of 7 October 2020 in which the Applicant was advised:

“We acknowledge receipt of the below email and request.

The legal member has considered your request and in light of your clients position the Tribunal would grant one final extension of two further weeks from 16th October, so that we expect a response to the information previously requested no later than 30th October failing which the application may have to be rejected.”

5. No response was received.

Reasons for Decision

6. 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."

7. '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*".

8. Rule 109 of the Tribunal Rules requires:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction ground or grounds has been met;

(ii)a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c)be signed and dated by the landlord or a representative of the landlord.

The applicant failed to produce necessary information and evidence to support the application. The application could not proceed.

9. 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.

13 November 2020

Legal Member/Chair

Date