



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/CV/22/0286

Re: 54 North Bugtlin Gate, Edinburgh, EH12 8XL ("the Property")

Parties

Mr Daniel Carnie (Applicant)

Miss Stacey Flynn (Respondent)

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 111 on 31 January 2022.
2. The application was considered by the Tribunal on 30 March 2022. The Applicant was asked to provide further information as follows:

"Before a decision can be made, we need you to provide us with the following: • Thank you for your recent response • 1. With regard to the service of the application on the Respondent you have confirmed that you cannot trace the Respondents new address in those circumstances you can apply for service by advertisement by completing and returning the form you will find on our website www.housingandpropertychamber.scot and providing written confirmation from your

tracing agent that they could not trace the Respondent. • 2. Can you also please provide a copy of the tenancy agreement as well or if there was no written agreement please provide full details of the tenancy including when it started, the parties and the rent due and any deposit paid and details of what has happened to the deposit if there was one. Please reply to this office with the necessary information by 13 April 2022. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant did not respond. The tribunal wrote again on 9 May 2022 in the following terms:

“Before a decision can be made, we need you to provide us with the following: • Please respond to further information request letter of 30 March 2022. Please reply to this office with the necessary information by 16 May 2022. If we do not hear from you within this time, it is likely that the application will be rejected. “

No response was received.

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 application seeks to proceed under Rule 111. The Applicant has failed to provide necessary information. The Tribunal cannot grant an order under Rule 111 without the information requested.

7. 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.

A Strain

6 June 2022

Legal Member/Chair

Date