



**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/20/0686**

**Re: 106B High Street, Brechin, Angus, DD9 6AX ("the Property")**

#### **Parties**

**Mr David Shepherd, Mrs Elena Shepherd (Applicant)  
Ms Linzey Northwood (Respondent)**

**Shiells (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 111 on 27 February 2020. The following documents were enclosed with the application:

- (i) Private Residential Tenancy Agreement (**PRTA**) commencing 11 April 2018;
- (ii) Rent Statement.

2. Subsequent to the application being received the Applicant applied for service by advertisement. The application was considered by the Tribunal and further information was requested by letter of 8 July 2020. The Applicant was asked to:

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

- Your application together with the request for service by advertisement has been considered by a legal member of the Tribunal who also has had your intimation that your clients have no further information.
- The legal member thought it appropriate to refer to the relevant sections of The first-tier Tribunal for Scotland Housing and Property Chamber ( Procedure) Regulations 2017:
- *5 (4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this in the application and complete a request for service by advertisement in accordance with paragraph (5).*
- *5(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.*
- *5(6) The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.*
- In respect of Rule 5 (4) the Respondent moved from the Property subsequent to the application being made.
- In respect of Rule (5) (5) the Applicants' request for service by advertisement was accompanied by a copy of a letter sent to registered landlords in Russell Square, Arbroath. You have advised the Tribunal that the Applicants understood that the Respondent had moved to a property in Russell Square, Arbroath. The letter invited such landlords to contact them if the Respondent was living at a property owned by any of them. You have advised that these letters elicited no information with regard to the whereabouts of the Respondent.
- It was suggested to you that the Applicants may want to consider instructing a tracing agent or a sheriff officer to attempt to find the whereabouts of the Respondent. On 10<sup>th</sup> June 2020 you advised that your clients had no further information which would assist. In response to further correspondence from us, you advised on 24<sup>th</sup> June 2020 that your clients had no further information which would assist.
- The legal member considered that, before a decision can be made whether or not to progress the application under Rule 111 for determination, the request for service by advertisement has to be decided. If no service is effected on the Respondent, either by sheriff officer or by advertisement, then the application cannot proceed to determination.
- The legal member does not consider that there is sufficient information to deal with the request for service by advertisement. The Applicants have written to landlords in an area where they believe the Respondent to reside but this is not considered to be sufficient to satisfy the Tribunal that sufficient steps have been taken to find the Respondent. Personal service is always preferable to service by advertisement. A possible course of action had been suggested to you with regard to the instruction of instructing sheriff officers or tracing agents to ascertain the whereabouts of the Respondent. The legal member considered rejecting the application but, in fairness to the Applicants and in consideration of

the overriding objective set out in Rule 2, determined that it should give a final opportunity to the Applicants to provide more information.

- In terms of Rule 5 (6) the Applicants are requested to provide a report from suitable agents such as sheriff officers or tracing agents setting out what steps have been taken to ascertain the whereabouts of the Respondent.
- The legal member has indicated that, if your clients choose not to take the course of action suggested, it is possible that their application will be rejected.

Please reply to this office with the necessary information by **22 July 2020**. If we do not hear from you within this time, the President may decide to reject the application.”

4. No response was received. The application was considered by the Tribunal and the Tribunal wrote by letter of 20 August 2020 requesting further information as follows:

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

*Your application has been referred to a legal member. The legal member has considered the request for further information sent to you on 8 July 2020 and notes that you have not responded.*

*The legal member asks you to provide the information requested within 14 days failing which your application may be refused.*

*Please reply to this office with the necessary information by 4 September 2020. If we do not hear from you within this time, the President may decide to reject the application.”*

5. The Applicant’s Representatives responded by email of 1 September 2020 in the following terms:

*“Good evening to you.*

*Our clients have been in touch.*

*They advise that they are unable to provide any information or assistance beyond that already given. They believe that they have been vigorous in their attempts to locate the Tenant and fair to that Tenant.”*

### **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 111 of the Tribunal Rules requires the address of the Respondent to be detailed in any application:

#### **Application for civil proceedings in relation to a private residential tenancy**

111. Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

(a)state—

- (i)the name and address of the person;
- (ii)the name and address of any other party; and
- (iii)the reason for making the application;

(b)be accompanied by—

- (i)evidence to support the application; and
- (ii)a copy of any relevant document; and

(c)be signed and dated by the person.

**Rule 5 governs application for service by advertisement. It provides:**

4) Where the address of a party is not known to the person making an application under these Rules, the applicant must state this in the application and complete a request for service by advertisement in accordance with paragraph (5).

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

The Tribunal had requested a sheriff officer's or tracing agent's report. The applicant failed to produce this. 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.**

# A Strain

8 September 2020

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Legal Member/Chair

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Date