



**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/21/1981**

**Re: 13 Tighnasheen Way, Blantyre, G72 9AL ("the Property")**

**Parties:**

**Lubna Ajaz ("the Applicant")**

**Michelle McFarlane ("the Respondent")**

**Tribunal Member:**

**Helen 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 65 on 17<sup>th</sup> August 2021. The grounds for possession/eviction were stated to be Ground 10. The following documents were enclosed with the application:
  - (i) Tenancy Agreement commencing on 25<sup>th</sup> July 2016
  - (ii) Form AT5
  - (iii) Correspondence between the parties.
2. The application was considered by the Tribunal and further information was requested by letter dated 30<sup>th</sup> August 2021, as follows:
  1. Recovery is sought under ground 10. It appears that the applicant is relying on text messages. Can these please be resubmitted as it is not clear what date the notice to quit was served; who the notices were sent

from and to. If the messages do not clearly show this, can you please also submit a signed statement from the applicant confirming these matters.

2. There are text messages submitted with a green background, it not possible to read these due to the size in which they have been submitted, please resubmit them in a format that allows them to be read.

3. The title deeds show that the property is jointly owned by LUBNA AJAZ and SUREIYA BIBI; please advise if SUREIYA BIBI is to be a joint applicant in this case, and if so please amend the application. If the application is to be brought in the sole name of LUBNA AJAZ, please have SUREIYA BIBI provide their written confirmation that they consent to these proceedings being raised in the sole name of LUBNA AJAZ.

4. Please provide a copy of the AT6 Notice served on the tenant together with evidence of service. 5. Please provide a copy of the section 11 notice served on the local authority together with evidence of service.

The Applicant was given until 13<sup>th</sup> September 2021 to respond, failing which the application may be rejected.

3. The Applicant's representative responded by email of 13<sup>th</sup> September 2021 enclosing a statement from the Applicant confirming receipt of text messages from the Respondent; letter of consent from Sureiya Bibi authorising Lubna Ajaz to act on her behalf; and copy text messages between the parties.

4. The Tribunal considered the Applicant's response on 30<sup>th</sup> September 2021 and further information was requested by letter as follows:

1. Section 19(1) of the Housing (Scotland) Act 1988 requires an AT6 to be served in circumstances where Ground 10 is relied upon. If you wish the Tribunal to dispense with this requirement you should make application to do so setting out the reasons why you consider it reasonable to do so.

2. Please provide your written submissions (including reference to authority) as to how the application can proceed without a section 11 Notice having been served

The Applicant was given until 14<sup>th</sup> October 2021 to provide this information. No response was received.

5. A further requests for the above information was made on 16<sup>th</sup> November 2021, allowing a period of 14 days for a response. No response was received.

6. The application was considered further on 20<sup>th</sup> January 2022.

## 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 a form AT6 or submissions regarding dispensation of the form. Nor can it be accepted without the service of a section 11 Notice in terms of the Homelessness etc. (Scotland) Act 2003, and evidence of service of said notice.
10. 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.**



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**Legal Member/Chair**

**20<sup>th</sup> January 2022**  
**Date**