



**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/22/3595**

**Re: 59 Crannog Way, Kilwinning, KA13 6NW (Property)**

**Parties**

**Ms Joanne McLaughlin (Applicant)**

**Mr Emmamuel Mujabi, Shelleon Mujabi (Respondent)**

**Holmes Mackillop Limited (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 30 September 2022.
2. The application was considered by the Tribunal and further information was requested by letters of 29 November 2022 and 6 January 2023 as follows:

“In order for the tribunal to grant an eviction order in respect of a private residential tenancy under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016, the tribunal must be satisfied (among many things) that a Notice to Leave has been served upon the tenant in a manner which complies with the relevant law. You have indicated that you sent the notice by email and WhatsApp to the tenant. In order for that form of delivery to be lawful service it would require to comply with the provisions contained in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010. In terms of that Act, service of documents and notices by electronic communications is only permissible where the person on whom the document is being served has agreed, prior to the document being served, that it may be served in this manner and that it may be sent to an electronic address and in an electronic form specified by the person for the purpose. Please provide evidence that you agreed with your tenant in advance of the service of the notice by email that your tenant was willing to receive notices by electronic communications and the evidence of the electronic address and the electronic form specified by the tenants for that purpose. We note that the tenancy agreement which has been provided bears to follow the standard format of a short assured tenancy. As you will undoubtedly be aware this type of tenancy was abolished on 1 December 2017. Since that date the private residential tenancy has been in place and there is a model form of tenancy agreement available on the Scottish Government website. A landlord is also required by law to give a tenant a set of notes to accompany their tenancy terms. Please confirm that the landlord has provided the appropriate notes to the tenants when this tenancy was created. Upon receipt of the above information, a final decision can then be taken on whether your eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. Please respond to this letter within the next 14 days. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.”

No response was received to any of the requests for information.

### **Reasons for Decision**

3. 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."*

4. '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"*.

## 5. Rule 109 of the Tribunal Procedure Rules provides:

### **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 (if known); 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

(iv)a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

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

The Applicant has failed to provide necessary information (namely, that the Notice to Leave has been served on the tenant in accordance with section 52(3) of the Act). The Tribunal could not grant the order sought.

6. 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.**

15 February 2023

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Legal Member/Chair

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Date