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/21/0880

Re: 46 Craigend Road, Stow, TD1 2RN ("the Property")

Parties

Mrs Patricia Young (Applicant)

Mr William McConchie (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 109 on 9 April 2021.

2. The application was considered by the Tribunal and further information was requested by letter of 22 April 2021. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following: • Thank you for your application form unfortunately we require some further information before the application can be accepted. Can you please provide the following items :- • 1.Please let us have a copy of the tenancy agreement entered into between yourself and the tenant • 2.Please let us have evidence of the service of the Notice to Leave on the tenant such as a copy e-mail or evidence of it being sent by recorded delivery? • 3.Please advise of your landlord registration number as we could not find it? •

4.Please provide a copy of the s11 notice that is required to be submitted with any application for eviction which is a notice required in terms of section 11(3) of the Homelessness etc Scotland Act 2003 and which is sent to the local authority in which the Property is situated to alert them to the fact the tenant may become homeless and requires assistance. Please also provide evidence of the service of this notice on the local authority. • Please let us have these items within 14 days so that your application can be considered further Please reply to this office with the necessary information by 6 May 2021. 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 by letter of 17 May 2021 in the following terms:

"Before a decision can be made, we need you to provide us with the following: • Further information required as requested on 22 April (first request). Please reply to this office with the necessary information by 31 May 2021. If we do not hear from you within this time, the President may decide to reject the application."

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. 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 the tenancy agreement, evidence of service of the notice to leave and a copy of the section 11 Notice. As the Applicant has failed to provide necessary information the Tribunal could not grant the order sought.

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.

14 June 2021

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Legal Member/Chair   **Date**