



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/21/1695

Re: 7 Allan Street, Arbroath, Angus, DD11 1EB ("the Property")

Parties

Mr Lindsay Palser (Applicant)

Mr Connor Cresswell, Mr Kieran McGuigan (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 13 July 2021.
2. The application was considered by the Tribunal and further information was requested by letter of 28 July 2021. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following: • 1. One of the Respondents is not named on the tenancy agreement you have lodged. Please clarify the legal basis for proceeding with an application against a person who is not part of the tenancy contract or advise if you wish to amend the application to the correct Respondents. You may wish to take legal advice or consult the CAB or a housing advisor. • 2. Please provide a full copy of the signed tenancy agreement. • 3. Please provide addresses for the Respondents. If you do not have addresses, you will require to apply for service by advertisement using the form on the Tribunal website.

When submitting this you must provide evidence of attempts to obtain addresses, such as trace reports from tracing agents or a Sheriff Officer. • 4. You have submitted un-redacted bank statements. Please note that copies of all documents will be given to the Respondents. Please advise if you wish to withdraw the statements or re-place them with redacted versions. • 5. Please provide a rent statement showing the rent due, the rent paid and the running total outstanding for the relevant period. • 6. Please provide receipts, vouchers, invoices or other evidence of the reinstatement works carried out at the property.”

Please reply to this office with the necessary information by 11 August 2021. If we do not hear from you within this time, the President may decide to reject the application.”

3. No response was received. The Tribunal wrote again on 24 August 2021 in the following terms:

“Before a decision can be made, we need you to provide us with the following: • The tribunal have provided you with a further 14 days to respond to our recent further information request letter. Please reply to this office with the necessary information by 7 September 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. The Applicant failed to provide necessary information to the Tribunal. 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.

22 September 2021

Legal Member/Chair

Date