



**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/21/2111**

**Re: 47C Baldovan Terrace, Dundee, DD4 6NQ ("the Property")**

### **Parties**

**Mr William David Herring, Mrs Frances Herring (Applicant)  
Miss Laura Aberdein (Respondent)**

**MML Legal (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 65 on 30 August 2021.
2. The application was considered by the Tribunal and further information was requested by email of 15 September 2021 and 26 October 2021. The Applicant was asked to:

*"Before a decision can be made, we need you to provide us with the following: Further information required (14 days): (1) Please provide proof of title to make the application and confirm the full address of the property, including the postcode e.g. provide title deeds showing that the Applicants are the joint proprietors of 47C Baldovan Terrace and have title to enter into the tenancy agreement and title to make this application.*

*(Please note that the tribunal obtained the title sheet ANG2293, which shows that the Applicants are joint registered proprietors of 47D Baldovan Terrace, DD4 6NJ, which is the address on the tenancy agreement provided). (2) Please provide proof of landlord registration for 47C Baldovan Terrace for both applicants. (3) Supporting evidence is required for ground 1 relied upon for possession e.g. sworn affidavits from the joint applicants and/or other evidence in support of the landlords' intention to live in the property (4) Please provide proof of service of the AT6 notice and Notice to Quit at the correct address. Please note that confirmation is required as to whether the proof of postage lodged relates to both the AT6 and the NTQ. (5) Please provide proof of sending Section 11 notice to the local authority. Please reply to this office with the necessary information by 29 September 2021."*

3. The information was not 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 65 provides for certain information to be supplied with an application:

#### **Application for order for possession in relation to assured tenancies**

**65.** Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 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; and

(iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b) be accompanied by—

(i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and

(iv) evidence as the applicant has that the possession ground or grounds has been met; ...

(v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and

(vi) 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 failed to produce evidence to support the application that had been requested. The application could not proceed.

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.**

# A Strain