

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALAN STRAIN, LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of
Procedure 2017 ("the Rules")

in connection with

134 Kincorth Circle, Aberdeen,
AB12 5NX

Case Reference: FTS/HPC/EV/18/0667

JOHN MONTEITH AND MRS ARLENE MONTEITH ("the Applicants")

MICHAEL WIELGOSZ ("the Respondent")

1 On 20 March 2018, an application was received from the applicants via their solicitor. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an Assured Tenancy. The following documents were enclosed with the application:-

- (i) AT6;
- (ii) Copy Notice to Quit; and
- (iii) Copy Sheriff Officer's Execution of Service.

2 A request for further information was issued to the Applicant's solicitor, seeking (amongst other things) clarification as to the duration of the lease. That request was responded to by

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email on 18 May 2018 from Mr. Purdie solicitor for the Applicants inviting the Tribunal to reject the application on the basis no tenancy had been created which failing to treat the application as withdrawn.

DECISION

4 I 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;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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 After consideration of the application, the attachments and correspondence from the Applicants' solicitor, I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and I have good reason to believe that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

REASONS FOR DECISION

6 '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
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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"*. It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

7 The issue identified in this action is whether a tenancy has been created. The Applicants' solicitor, in the correspondence received on 18 May 2018, accepts that a tenancy has not been created.

8 Given the concession that no tenancy exists this Tribunal does not have jurisdiction. As such, the application is rejected on the basis that it is frivolous and there is good reason why the application should not be accepted.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision: –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

P Woodman

Legal Member

