



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/22/2139

Re: 1 Munro Place, Elgin, IV30 4LN ("the Property")

Parties

Mr Shahzad Ashraf, Mrs Naeela Shahzad (Applicant)

Miss Lorraine Hilton (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 1 July 2022.
2. The application was considered by the Tribunal on 5 September 2022. The Applicant was asked to provide further information as follows:

"Before a decision can be made, we need you to provide us with the following: • Please provide a rent statement with columns showing rent and date due, rent and date paid and a running total of rent arrears – this is the usual way in which this information is presented to the Tribunal, and it will allow you to withdraw the bank statements entirely, to avoid circulating personal information. When you lodge the new rent statement, please confirm that you wish to withdraw the bank statements."

3. The Applicant did not respond. The tribunal wrote again on 8 November 2022 in the following terms:

“Before a decision can be made, we need you to provide us with the following: • We refer to our letter to you dated 5th September 2022, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 7 days of this letter or the Tribunal may well reject your application. The Tribunal further notes that the letter which purports to increase the rent does not appear to be use the appropriate form, and provides less than the minimum three month period of notice to the tenant. Please provide your observations on the validity of the rent increase. Please reply to this office with the necessary information by 15 November 2022. 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 application seeks to proceed under Rule 111. The Applicant has failed to provide necessary information. The Tribunal cannot grant an order under Rule 111 without the information requested.

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.

Alan Strain

15 December 2022

Legal Member/Chair

Date