



**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/20/1795**

**Re: 3 Coniston Drive, Bellshill, ML4 2JZ ("the Property")**

**Parties**

**Ms Thi Hoai Thuong Le (Applicant)**

**Mr Scott Hutton (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 110 on 26 August 2020.
2. The application was considered by the Tribunal and further information was requested by email of 2 September 2020. The Applicant was asked to:

*"Before a decision can be made, we need you to provide us with the following:*

*The application has been raised under Rule 110 which relates to proceedings where it is alleged the landlord has wrongfully terminated the tenancy. The application makes mention of seeking an order for payment. If you wish to obtain an order for payment of the deposit you will have to amend the application to that of one under Rule 111.*

*Please reply to this office with the necessary information by 16 September 2020. If we do not hear from you within this time, the President may decide to reject the application."*

3. The information was not received. The application was considered by the Tribunal and the Tribunal wrote by letter of 13 October 2020 requesting a response. No response was received.

4. The information was not received. The application was considered by the Tribunal and the Tribunal wrote by letter of 10 November 2020 requesting a response:

*"Before a decision can be made, we need you to provide us with the following:*

*The application CV/20/1975 has been raised under Rule 110 which relates to proceedings where it is alleged the landlord has wrongfully terminated the tenancy. The application makes mention of seeking an order for payment. If you wish to obtain an order for payment of the deposit you will have to amend the application to that of one under Rule 111.*

*Please reply to this office with the necessary information by 17 November 2020. If we do not hear from you within this time, the President may decide to reject the application CV/20/1975."*

### **Reasons for Decision**

5. 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."*

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 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".*

7. Rule 111 of the Tribunal Rules requires:

## Application for civil proceedings in relation to a private residential tenancy

111. Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

(a) state—

- (i) the name and address of the person;
- (ii) the name and address of any other party; and
- (iii) the reason for making the application;

(b) be accompanied by—

- (i) evidence to support the application; and
- (ii) a copy of any relevant document; and

(c) be signed and dated by the person.

The applicant failed to produce necessary information and evidence to support the application. The application could not proceed.

8. 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

9 December 2020

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Legal Member/Chair

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Date