



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/20/1733

Re: Barlay, New Abbey, Dumfries, DG2 8DY ("the Property")

Parties

**Executors Nominate of the Late (Applicant)
Mr Gary Moody, Mrs C Moody (Respondent)**

G M Thomson & Co (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 17 August 2020.
2. The application was considered by the Tribunal and further information was requested by email of 8 October 2020. The Applicant was asked to:

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

1. *You were previously asked to provide evidence of service of the Section 11 Notice but have failed to do so. Please provide this evidence.*
2. *You were asked to provide a mandate from the Applicant authorising GM Thomson to act in this matter. You appear to have provided a mandate by GM Thomson. Please provide a mandate from the Applicant.*

3. Please confirm the name and contact details of the Executors who have instructed you in this matter.
4. The replacement page of the application form does not provide the address of the property and does not mention grounds 11 and 12, although these are in the original form. Please provide a replacement page which is fully completed.
5. The date specified in the Notice to Quit appears to be incorrect as it is not an ish date. Please clarify the basis upon which the Tribunal can consider the application.
6. The Sheriff Officer report indicates that the notices were not served on the second respondent. Please clarify the position.

Please reply to this office with the necessary information by 22 October 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 16 November 2020 requesting further information as follows:

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

1. *Please provide the information requested in the Tribunal's letter to you of 8 October 2020.*

Please reply to this office with the necessary information by 30 November 2020. If we do not hear from you within this time, the President may decide to reject the application."

4. No response was received.

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 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.

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.

A. S

9 December 2020

Legal Member/Chair

Date