



**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/20/0911**

**Re: 2/1, 7 Broomhill Avenue, Glasgow, G11 7AE ("the Property")**

### **Parties**

**Mr Nitu Satminder Singh, Mr Tony Ratvinder Singh (Applicant)  
Miss Gaynor Cameron, Mr Alistair Fairlie (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 rejected 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 70 on 12 March 2020. The application sought an order for payment in respect of rent arrears. The following documents were enclosed with the application:

- (i) Tenancy Agreement;
- (ii) Paper Apart;
- (iii) Rent Statement.

2. On 19 August 2020 the Applicant's agents submitted an application for service by advertisement. By email of 20 August the Applicant's agents were requested:

*"Can you ask the Applicant agent to provide a trace report from a tracing agent or Sheriff Officer in connection with the application for service by advertisement."*

3. On 27 August the Applicant's agents emailed the Tribunal in the following terms:

*"Dear Sirs,*

*FTS/HPC/CV/20/0911*

*I refer to the above matter and write to advise I require to withdraw from acting on behalf of the Applicants, Mr Tony Singh and Mr Nitu Singh.*

*I have copied both Applicants to this email so that the Tribunal may correspond with them directly. I can confirm the Applicants have been made aware of the Tribunal's request for a trace report contained within letter dated 20 August 2020.*

*Kind regards"*

4. On 8 October 2020 the Tribunal emailed the Applicant in the following terms:

*"Dear Sirs,*

*I am hoping you can provide an update regarding the attached. We have had no response since the correspondence advising your Representative would no longer be acting for you.*

*If you no longer wish to proceed with the application please advise, as we are unable to close the case unless you request to at this current point."*

5. No response was received. The Tribunal wrote again by letter of 26 October 2020 in the following terms:

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

- We refer to our letter of 8th October following your agents withdrawal from acting for you, asking for your further instructions in relation to the application for rent arrears and the service by advertisement on the Respondents. • We require evidence of an unsuccessful trace by sheriff officers or a tracing agent and note your agent was asked for this previously and you were then reminded of this on 8th October. We cannot progress your application without this information. • Please advise if you wish to withdraw your application and to resubmit if and when you have a trace or a new address for the Respondents or please submit the evidence of failure to trace the Respondents as requested.*

*Please reply to this office with the necessary information by 9 November 2020. If we do not hear from you within this time, the President may decide to reject the application."*

6. No response was received.

## Reasons for Decision

7. 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."***

8. '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*".
9. Rule 70 of the Tribunal Rules of Procedure require certain documents and information to be provided. The Applicant has failed to provide information required by the Tribunal.
10. In light of the lack of response from the Applicant the Tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that the failure to provide necessary information constituted 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

20 November 2020

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**Legal Member/Chair**

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**Date**