



**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/21/0914**

**Re: Flat 1, 1 Mintow Mews, Blacket Mews, Edinburgh, EH9 1AB ("the Property")**

**Parties**

**Dancourt Properties Limited (Applicant)**

**Mr James-Earl Leonard Kolleh-McBorrough (Respondent)**

**Ben Property Management (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 111 on 14 April 2021.
2. The application was considered by the Tribunal and further information was requested by letter of 13 May 2021. The Applicant was asked to:

*"Thank you for your reply with the additional information. You describe the person who intends to live in the property as the owner of the property. The applicant in this case is a company rather than an individual. The definition of a qualifying family member is included in the legislation in ground 5 (4) and (5) of the Act. Please advise how you consider the situation you describe in this case is consistent with ground 5 and in*

*particular with the statutory requirements for the nature of the relationship of the person stated as the “family member”. Please reply to this office with the necessary information by 27 May. If we do not hear from you within this time, the President may decide to reject the application.”*

3. The Applicant responded by email of 26 May 2021 in the following terms:

*“Many thanks for your email and attached letter. The reasoning is that we believe it meets the ground 5 in legislation as it is a family member of the owners of the company that owns the property who wishes to move in with her daughter. This has been forced upon them due to the fact the tenant has not paid any rent at all since August of 2020 and is £15,000 in arrears which means that can’t afford their own home. I sent a statement of account on with first application.”*

### **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. Ground 5 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (**Act**) provides:

(4)For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a)in a qualifying relationship with the landlord,

(b)a qualifying relative of the landlord,

(c)a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.

The Landlord in this application is a limited company. The person(s) identified as being family members in the application do not fulfil any of the definitions within Ground 5(4) or (5). The Tribunal could not grant the order sought.

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.**

**A.S.**

**10 June 2021**

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**Legal Member/Chair**

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**Date**

