



**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/23/2135**

**Re: 10 Links Road, Bridge of Don, Aberdeen, AB23 8DJ (Property)**

**Parties**

**Mrs Emily McEwan (Applicant)**

**Mrs Lina Tesch, Mr Klaus Tesch (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.**

**Background**

1. The application was received by the Tribunal under Rule 109 on 27 June 2023.
2. The application was considered by the Tribunal and further information was requested by email of 29 July 2023 as follows:

"Please provide evidence of the method of service of the notice to leave upon the tenant Klaus Tesch and proof that it was received.

The notice to leave (NTL) which you have provided appears to be dated 4 April 2023 and indicates you will not apply to the tribunal for an order prior to 2 June 2023. Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) and confirm whether the NTL

meets the requirements of those sections with particular regard to both the required period of notice to be given and the effective date to be inserted into a NTL and whether it should be regarded as valid.”

The Applicant responded by email of 14 August 2023 in the following terms:

“The notice to leave was emailed to Lina Tesch but addressed to both Lina and Klaus Tesch and I have provided text messages evidence to show that Lina Tesch received the Notice to Leave.

We initially served the Notice to Leave paperwork in the wrong format (it did not include the necessary additional information at the end of the document). We re-served the Notice to Leave paperwork to Lina and Klaus Tesch but retained the original date of 2 June 2023 (giving the maximum notice period we could to Lina and Klaus Tesch).

I can confirm the notice to leave period meets the requirements in the sections identified in Private Housing Act 2016.”

### **Reasons for Decision**

3. 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."*

4. '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".*

5. Rule 109 of the Tribunal Procedure Rules provides:

#### **Application for an eviction order**

**109.** Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 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 (if known); and
  - (iv) the ground or grounds for eviction;
- (b) be accompanied by—
- (i) evidence showing that the eviction ground or grounds has been met;
  - (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and
  - (iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
  - (iv) 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 has served a Notice to Leave with less than the required notice. The Applicant seeks to rely on Ground 1. 84 days notice must be provided to the tenant in terms of section 54(2) of the Act. The Applicant served the Notice to Leave by email of 4 April 2023. The date of expiry of the notice was specified to be 2 June 2023. The Applicant has failed to give sufficient notice as required. The Notice to Leave is accordingly invalid. The Tribunal cannot grant the order applied for.

5. 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.. 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.**

**18 August 2023**

\_\_\_\_\_  
**Legal Member/Chair**

\_\_\_\_\_  
**Date**