



**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/21/1615**

**Re: 5B Buccleuch square, thomas street, Langholm, DG13 0AW ("the Property")**

## **Parties**

**Miss Clare Kettlewell (Applicant)**

**Mr Aaron Mahoney (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 70 on 7 July 2021.
2. The application was considered by the Tribunal and further information was requested by letter of 21 July 2021. The Applicant was asked to:

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

*(1) It is noted that there are two joint proprietors on title sheet - GEORGE WYLIE and CLARE KETTLEWELL both Novantae View, Carlisle Road, Annan, DG12 6QS equally between them and the survivor of them. The same two individuals are registered as*

landlords. Only Claire Kettlewell is named on the tenancy agreement. Please provide written authorisation from the joint proprietor to the applicant entering into the tenancy agreement with the Respondent and making this application in her sole name.

(2) The Application requires to be amended: a. You have made the application under the wrong rule number for this type of tenancy. For a private residential tenancy it should be 111, not 70 b. The total amount sought in a payment order for rent arrears must be specified. If you are only seeking half of the rent arrears outstanding this sum should be specified rather than the full amount. c. Section 5(c) should only contain details of the remedies sought. All remedies sought must be within the jurisdiction of the tribunal. Please amend section 5(c) to remove any narrative that is not a remedy. The tribunal cannot establish whether there is further debt such as electricity bills. If you wish to claim for unpaid bills you will require to investigate, provide evidence and amend your claim to seek a payment order with the amount sought.

(3) If the whereabouts of the tenant are unknown, you require to provide evidence of attempts to trace, such as a report from a tracing agent and you will have to submit a Service by Advertisement Application. The Form and Guidance can be found on the Chamber's website. <https://www.housingandpropertychamber.scot/apply-tribunal/evictionsand-civil-proceedings/forms-and-guidance-evictions-and-civilproceedings>

(4) Please provide a revised rent schedule showing the dates and amounts of payments due, as well as the dates and amounts of payments made, with a running total and a final total supporting the amount of arrears claimed in the application.

Please reply to this office with the necessary information by 4 August 2021. If we do not hear from you within this time, the President may decide to reject the application."

3. No response was received. The Tribunal wrote again on 23 August 2021 in the following terms:

"Before a decision can be made, we need you to provide us with the following: Your application has been referred to a legal member. The legal member request further information as follows: 1. Please provide the information requested in the tribunal's letter to you of 21 July 2021. Please provide the information requested within 14 days failing which your application may be refused. Please reply to this office with the necessary information by 6 September 2021. If we do not hear from you within this time, the President may decide to reject the application."

No response was received.

### **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."*

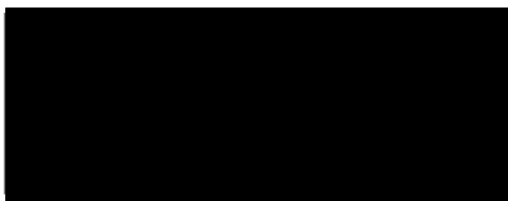
5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*".

6. The Applicant failed to provide necessary information to the Tribunal. 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.**



**30 September 2021**

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**Legal Member/Chair**

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**Date**