



**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/PR/20/2339**

**Re: 1/3 Bruntsfield Gardens, Edinburgh, EH10 4DX ("the Property")**

### **Parties**

**Mr Paul Hartmann (Applicant)**  
**Mr Fraser MacDonald (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 110 on 6 November 2020. The application sought a wrongful termination order under section 57(2) or 58(2) of the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**. The application enclosed:

- (i) a short assured tenancy (**SAT**) regulated by the **Housing (Scotland) Act 1988**.

2. The application was considered by the Tribunal and further information was requested by letter of 19 November 2020. The Applicant was asked to provide the following further information:

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

- *Your application is made under Rule 110 of the Tribunal Procedure Rules which seeks a wrongful termination order under section 57(2) or 58(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act). Applications under Rule 110 are in respect of wrongful termination of Private Residential Tenancies created on or after 1 December 2017. The lease you have provided appears to have been created in 2011 and is a short assured tenancy regulated by the Housing (Scotland) Act 1988. Please explain why you consider the tenancy to have been a Private Residential Tenancy?*
- *If the tenancy is a short assured tenancy then the application cannot proceed under Rule 110.*

*Please reply to this office with the necessary information by 3 December 2020. 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 3 December 2020 seeking an extension of time to respond – which was granted. He then responded by email of 4 December 2020 in the following terms:

*“I presented this application under Rule 110 with the impression that if my lease was found null and void in another tribunal proceeding then this would cover me in any event. As I am unsure of what the outcome is in this other tribunal, I believe the Lease is a short assured tenancy and as it stands, cannot proceed according to point 2 in your email”*

4. The Tribunal wrote to the Applicant by email of 18 December 2020 asking him to confirm he was withdrawing the application. By email of 31 December 2020 he confirmed that he was withdrawing the application. He then sent a later email of the same date asking:

*“Before withdrawing the application, Please can you take another look at Ref 2339 in light of the decision in case 1698, section 47 of the decision. I'm unsure if this has had an affect on this application”*

The Tribunal responded by email of 5 January 2021 in the following terms;

*“Application FTS/HPC/PR/20/2339 has not at this time been withdrawn, following your further email to us shortly after sending the withdrawal request (a separate email was sent to you regarding this a short time ago, if you could please respond accordingly).”*

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 110 relates to wrongful termination orders under section 57(2) or 58(2) of the **Private Housing (Tenancies) (Scotland) Act 2016**. The tenancy relied upon was an SAT under the **Housing (Scotland) Act 1988**. The Tribunal could not grant an order under Rule 110 in respect of an SAT.

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 Strain

21 January 2021

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Legal Member/Chair

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Date