



**Decision with Statement of Reasons of H Forbes, 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/21/3081**

**Re: 29 Kersland Street, Glasgow, G12 8BP ("the Property")**

**Parties:**

**Michael Lim ("the Applicant")**

**McMillan & Company Residential Ltd ("the Respondent")**

**Tribunal Member:**

**Ms H Forbes (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 78 on 13<sup>th</sup> December 2021.
2. The application was considered by the Tribunal and further information was requested by letter dated 22<sup>nd</sup> December 2021, as follows:

It does not appear that this Rule or section 21 of the Rent (Scotland) Act 1984 are applicable as they relate to a situation where a landlord has recovered possession of a property let under a tenancy under the 1984 Act. You have provided information which indicates that the prospective tenancy was due to start in December 2021, and therefore would be covered by the Private Housing Tenancies (Scotland) Act 2016. Furthermore, there does not appear to have been an order for possession. Please clarify why you believe this Rule and section apply.

The Applicant was given until 5<sup>th</sup> January 2022 to respond, failing which the application may be rejected.

3. By email dated 23<sup>rd</sup> December 2021, the Applicant responded as follows:

I thought that the misrepresentation of ad/false advertising falls under Rule 78, in which I am asking for compensation for misrepresentation. However, based on your brief description/explanation, it doesn't seem to be so. Is there another appropriate agency for this?

4. The application was considered by a legal member and a further request for information sent out on 19<sup>th</sup> January 2022, requiring a response by 2<sup>nd</sup> February 2022, requesting the following information, failing which the application may be rejected:

Please note that the Tribunal cannot provide legal advice. Cases 7 and 8 referred to in S 21 of the Rent (Scotland) Act 1984 only relate to situations where a landlord has obtained an order for possession of a dwelling-house and not to advertising property, as set out previously. You may be able to obtain advice and guidance from organisations such as the CAB, Shelter or a solicitor. Please now withdraw the application under rule 78, otherwise this will have to be rejected.

5. By email dated 21<sup>st</sup> January 2022, the Applicant responded:

I just find these responses really strange because I already did what I was instructed to do last time. So I amended the form as told. So why is there another letter pertaining to 3081 about possession of a dwelling-house?!?!

6. The application was considered further on 7<sup>th</sup> February 2022.

### **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. The application cannot proceed as it stands as the Respondent in this case has not been granted an order for possession and the tenancy is not a tenancy under the Rent (Scotland) Act 1984.
10. 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.**

# H. Forbes

Legal Member/Chair

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7<sup>th</sup> February 2022

Date