



**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/CV/21/2794**

**Re: 45 Oldmill Road, Aberdeen, AB11 6EG ("the Property")**

**Parties:**

**David Grierson ("the Applicant")**

**Brighter Morn Property Limited ("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 69.
2. The application was considered by the Tribunal and further information was requested by letter dated 22<sup>nd</sup> November 2021, as follows:
  1. Please provide written authorisation of the representative by the applicant
  2. Please provide a full postal address for the respondent. "Great Northern Road Aberdeen" is not sufficient.
  3. S 36 of the Housing (Scotland) Act 1988 and rule 69 of the Rules of Procedure only apply in cases where the tenancy in question is a tenancy under the Housing (Scotland) Act 1988 (assured or short

assured tenancy) and the tenant has moved out (hence the wording of the rule “where a former residential occupier....”). The application does not include information about the nature of the tenancy and the address of the property is given as the address of the applicant. If the applicant still resides at the property the application would not be competent under that rule. Please thus send a copy of the tenancy agreement and confirm that the applicant has moved out and when the applicant moved out and confirm the new address of the applicant.

4. If the applicant is still residing at the property please withdraw the application and if appropriate raise a payment application for sums the applicant is claiming and explain in the application on what legal basis the sums sought would be due. Depending on the nature of the tenancy applicable rules may be rule 70 or rule 111 – please see our website for further information.

The Applicant was given until 6<sup>th</sup> December 2021 to respond, failing which the application may be rejected.

3. By email dated 5<sup>th</sup> December 2021, the Applicant’s representative responded as follows:

1. Linda Leung am Mr Grierson the applicants representatives.

2. The address of the Respondent is as follows 431 Grest Northern Road Aberdeen AB24 2EU

3. The applicant has been coerced to leave the property by the owner/landlord who is now stating he is not the owner landlord. So all very confusing Please see (separate email) the reason to leave notice, on which the ground the landlord is using is a clear lie. He has been divorced for years and has 24 properties plus has not provided any evidence to back up his ground. Please also note that Mr Grierson is now the sole tenant but being told he is in £3000 worth of debt which is not true. As if it were the case the landlord would have used the arrears ground. Mr Grierson has only resided in the property since June 2021 and has bank statements to prove rent £750 per month was paid. The landlord or his agent have not shown any proof of arrears.

Although Mr Grierson is still the tenant he does not reside in the property as he's been forced out due to the landlord removing Mr Griersons security camera, which the landlord authorised to install and Mr Grierson was informed by an unknown caller his locks were changed.

Please note Mr Grierson is mentally and physically disabled and has explained everything to his GP and CPN and Shelter Scotland.

4. The application was considered by a legal member and a further request for information sent out on 22<sup>nd</sup> December 2021, requiring a response by 5<sup>th</sup>

January 2022, requesting the following information, failing which the application may be rejected:

1. Written authorisation from the Applicant stating that you are authorised to act for him in this application;
2. A current address is required for the Applicant.
3. The legal basis of the application remains unclear. As this is a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016, you may wish to consider whether this should be an application under Rule 110 if the Applicant is alleging a wrongful termination without eviction order. This is a complicated matter, and the Applicant may be advised to take appropriate advice on the legal basis and correct rule under which the application should be made
5. No response was received.
6. The application was considered further on 24<sup>th</sup> January 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 without the requested information, and particularly without clarity as to the legal basis for the application and the appropriate rule under which it is lodged.

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. F

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Legal Member/Chair

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24<sup>th</sup> January 2022  
Date