



**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/20/2167**

**Re: 28 Nith Place, Kilmarnock, KA1 3NJ ("the Property")**

**Parties**

**Mrs Gillian McKenna-Cansfield (Applicant)**

**Mr Paul Anderson (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 78 on 14 October 2020. The application was in respect of a number of Tribunal Rules. This application has been registered under Rule 78 – Application for compensation for misrepresentation or concealment by landlord.
2. The documentation lodged with the application established that the Applicant had been the tenant of the Respondent from 27 September 2019 until its end in or around 4 October 2020 following notice from the Respondent.
3. The tenancy document was in the form of a Short Assured Tenancy (**SAT**). Given the date of creation of the tenancy it was actually a Private Residential Tenancy (**PRT**) under the **Private Housing (Tenancies) (Scotland) Act 2016**.
4. Rule 78 provides:

### **Application for compensation for misrepresentation or concealment by landlord**

**78.** Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

(a) state—

- (i) the name and address of the former tenant;
- (ii) the name, address and profession of any representative of the former tenant; and
- (iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by—

- (i) evidence of misrepresentation on the part of the landlord; and
- (ii) a copy of the order for possession; and

(c) be signed and dated by the former tenant or a representative of the former tenant.

Section 21 of the Rent (Scotland) Act 1984 (the 1984 Act) provides:

#### **21 Compensation for misrepresentation or concealment in Cases 7 and 8.**

Where, in such circumstances as are specified in Case 7 or Case 8 in Schedule 2 to this Act, a landlord obtains an order for possession of a dwelling-house let on a protected tenancy or subject to a statutory tenancy and it is subsequently made to appear to the First-tier Tribunal that the order was obtained by misrepresentation or concealment of material facts, the Tribunal may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as a result of the order.

### **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. The application seeks to proceed under Rule 78. The application concerns the termination of a PRT without an order for recovery of possession. Rule 78 does not apply in such circumstances. The Tribunal cannot grant any order under Rule 78 on the facts stated.

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.**

**Alan Strain**

**21 October 2020**

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**Legal Member/Chair**

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**Date**