



**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/22/2459**

**Re: 74A Fifth Avenue, Ground 1, Glasgow, G12 0AT ("the Property")**

**Parties**

**Mrs Sarah Butt, Mr Mohammad Ali A Butt (Applicant)**

**Unknown Unknown (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 22 July 2022. The application sought a wrongful termination order under section 58(2) of the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**.

2. The application was considered by the Tribunal and further information was requested by letter of 7 December 2022. 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: We refer to the letter issued by the Tribunal on 7 October 2022 and note your response by email on 10

November. You will note from our letter of 7 October that you are entitled to ask the Tribunal to serve the application on the Respondent by advertisement. However, such application should be accompanied with details of all of the efforts made by you to locate the Respondent. You may wish to consider instructing a sheriff officer to trace the Respondent. You may also wish to consider taking legal advice or consult a housing advisory service before you respond. Please respond within 14 days. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application. “

3. The Applicant did not respond. The tribunal wrote again on responded by email of 12 January 2023 in the following terms:

“Before a decision can be made, we need you to provide us with the following: We note that you have failed to respond to our letter of 7 December 2022 asking you to provide further information by 21 December 2022. Can you please advise the tribunal whether you are now in a position to provide the additional information which was requested in terms of that letter. Upon receipt of the above information, a final decision can then be taken on whether your application is valid and whether it should be accepted and referred to the tribunal for full determination. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Please respond to this letter within the next two weeks failing which it is very likely that the decision will be taken to reject this application on the basis of your failure to provide the necessary information requested by the tribunal. Please reply to this office with the necessary information by 26 January 2023. 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. Rule 110 provides:

#### **Application for a wrongful termination order**

110. Where a former tenant makes an application under section 57(2) (wrongful termination by eviction order) or section 58(2) (wrongful termination without eviction order) of the 2016 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 former landlord;

(b) be accompanied by evidence showing that the tenancy was unlawfully terminated; and

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

The Applicant has failed to provide required information, namely, the address of the landlord. In the circumstances the Tribunal could not grant an order under Rule 110.

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**

**15 February 2023**

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**Legal Member/Chair**

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**Date**

