



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/22/1727

Re: Flat 2/1, 163 Hamilton Road, Mount Vernon, Glasgow, G32 9QT ("the Property")

Parties

Mrs Claire Wilson-Thyne (Applicant)

Arete Developments Ltd (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 3 June 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 24 August 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:
1. Please provide copy of the tenancy agreement. Drop box is not appropriate.
Please reply to this office with the necessary information by 7 September 2022.*

If we do not hear from you within this time, the President may decide to reject the application. “

3. The Applicant did not respond. The Tribunal wrote to the Applicant by letter of 4 November 2022 in the following terms:

“Before a decision can be made, we need you to provide us with the following: We refer to our letter of 24th August and note we have not received a reply. As the only matter now outstanding is a copy of the tenancy agreement which you advised you could post we would be obliged if you could now post this to us if it cannot be sent by email. As previously advised we cannot accept documents sent by drop box. Please respond within 10 further days, so that your application can be finally determined. Please note that failure to respond could result in the application being rejected. Please reply to this office with the necessary information by 16 November 2022. 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 relates to wrongful termination orders under section 58(2) of the **Private Housing (Tenancies) (Scotland) Act 2016**. The tenancy relied upon was not produced. 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 December 2022

Legal Member/Chair

Date