



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)  
Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of  
Procedure 2017 ('the Rules').**

**In respect of application by Toner Ltd, 1/2, 23 Milovaig Street, Glasgow, G23 5JA ("the  
Applicant") in terms of Rule 95 of the Rules.**

**Countrywide Residential Lettings Ltd, Countrywide House, Lake View Drive, Annesley,  
Nottingham, NG15 0DT ("the Letting Agent")**

**Case reference FTS/HPC/LA/21/3139**

**Address of Property: 0/1, 21 Skirksa Street, Glasgow, G23 5AJ (the "Property").**

**At Glasgow on 14<sup>TH</sup> March 2022, Martin Joseph McAllister, legal member of the First –Tier  
Tribunal for Scotland ("the Tribunal") with delegated powers of the Chamber President, rejected  
the above application in terms of Rule 8(1) (a) of the Rules.**

## **Decision**

**The Application is rejected.**

## **Background**

- 1. This is an application by the Applicant in respect of complaints he has in relation to  
enforcement of the Letting Agent Code of Practice in respect of the Letting Agent's**

management of the Property. The Application is under Section 48 (1) of the Housing (Scotland) Act 2014 and is brought in terms of Rule 95 of the Rules.

2. The application is dated 17<sup>th</sup> December 2021.
3. The Applicant had previously submitted an application to the Tribunal which had been accepted for determination but was withdrawn by the applicant following upon certain procedure in the Sheriff Court. The reference for that case is FTS/HPC/LA/20/2493.
4. In short, parties had sought to come to settlement of the said case and the Letting Agent thought that it had an agreement for settlement and the Applicant considered that there was no such agreement. The Letting Agent raised an action of declarator in the Sheriff Court and the determination of the Court dated 5<sup>th</sup> October 2022 was that there had been a contractual agreement that the matter would be settled on the basis that the Letting Agent would pay the Applicant the sum of £3,914 and be responsible for payment of agreed legal fees. In the action of declarator, the Letting Agent was awarded expenses.
5. A Settlement Agreement dated 27<sup>th</sup> October 2021 was entered into between parties which stated *inter alia* that the Applicant would be paid £3,914 by the Letting Agent and would also be paid the sum of £ 480 inclusive of VAT in respect of legal fees once an appropriate VAT invoice had been produced. These sums reflected what had been determined by the Sheriff in the action of declarator.
6. Upon enquiry being made of it, the Applicant confirmed to the Tribunal that the sum of £3,914 had been paid to it by the Letting Agent and emails were exhibited which demonstrated that the Letting Agent was prepared to make payment in respect of legal fees but was awaiting the appropriate VAT invoice.
7. Section 5.1 of the said Settlement Agreement stated:

*This Agreement is in full and final settlement of all and/or any Claim which the Parties may have against each other, or against any group, associated, parent or subsidiary company of a Party or any successors, assignees, agent, representative or officer, director or employee of a Party or any successors, assignees, agent, representative or officer, director or employee of a Party, and the Parties hereby release and forever discharge the other from liability in relation to such a claim that there may be against each other or against any associated, party or subsidiary company of a Party or any successors, assignees, agent, representative, officer, director or employee of a Party.*

8. Section 4.1 of the said Settlement Agreement stated:

*“The Parties have resolved to settle the Dispute and have agreed terms in full and final settlement”* and went on to state that the application before the Tribunal

(FTS/HPC/LA/20/2493) would be withdrawn as a consequence of the Settlement Agreement being executed.

9. The Applicant confirmed that the application concerned matters arising prior to the execution of the Settlement Agreement on 27<sup>th</sup> October 2021.
  
10. The Applicant was asked to explain why it considered that the application should be accepted for determination notwithstanding the terms of the Settlement Agreement. It stated that the Settlement Agreement was to reflect the terms of the Sheriff's decision. It stated that the Sheriff Court judgement did not consider matters which were contained in the application now submitted to the Tribunal. The Applicant stated that it did not have legal representation when the Settlement Agreement had been signed and had been put under undue pressure to deal with it. The Applicant submitted a copy of an email to the Letting Agent's solicitor where it was suggesting that the solicitor had behaved improperly and in representations to the Tribunal stated that the Settlement Agreement should not be relied upon where there was improper conduct by one of the parties.
  
11. The Applicant invited the Tribunal to "balance the scale of justice in the judicial process" and allow the application to be accepted so that there could be a determination of whether or not there had been a breach of the Letting Agent Code of Practice and pointing out that this was not considered in the Sheriff Court action. The Applicant stated that, following upon a determination of the application by the Tribunal, it would seek to have the Settlement Agreement "rescinded" by the Sheriff Court.
  
12. The Applicant submitted a copy of the decision by Sheriff Holligan where he found that, in relation to the settlement discussions between the parties, there had been *consensus in idem* and agreement had been reached by them.

## Decision

13. The application is rejected.

## Reasons

14. Parties entered into a Settlement Agreement and they are bound by its terms. The Applicant concedes that the matters it seeks to have determined occurred prior to the execution of the Settlement Agreement.
  
15. Section 5.1 of the Settlement Agreement is decisive: *This Agreement is in full and final settlement of all and/or any Claim which the Parties may have against each other, ..... and the Parties hereby release and forever discharge the other from liability in relation to such a claim that there may be against each other.*

16. The terms of the Settlement Agreement are sufficient for the Tribunal to come to a determination on whether or not the application should be submitted for determination but it is helpful to consider the terms of Sheriff Holligan's decision: *"It is clear from the outset that the agreement would cover all matters between the parties and not just the dispute before the Tribunal."* In reference to the application before the Tribunal, the Sheriff means FTS/HPC/LA/20/2493.

17. It appears that the Applicant considers that it was not given the opportunity to have legal advice prior to signing the Settlement Agreement and that it may have some kind of complaint with regard to the actings of the Letting Agent's solicitor. These are not matters to be determined by the Tribunal

18. Rule 8(1) (a) of the Rules allows an application to be rejected by the Chamber President if it is considered that *"an application is vexatious or frivolous"*.

19. "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"*.

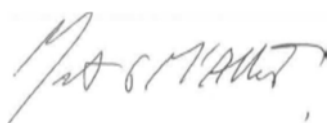
20. The Tribunal considers that this application is frivolous and has no reasonable prospect of success for the reasons given above.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



**Martin J. McAllister, Legal Member, 14<sup>th</sup> March 2022**





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**Countrywide Residential Lettings Ltd, Countrywide House, Lake View Drive, Annesley,  
Nottingham, NG15 0DT ("the Letting Agent")**

**Case reference FTS/HPC/LA/21/3140**

**Address of Property: 0/2, 15 Skirksa St, Glasgow, G23 5AJ (the "Property").**

**At Glasgow on 14<sup>TH</sup> March 2022, Martin Joseph McAllister, legal member of the First –Tier  
Tribunal for Scotland ("the Tribunal") with delegated powers of the Chamber President, rejected  
the above application in terms of Rule 8(1) (a) of the Rules.**

## **Decision**

**The Application is rejected.**

## **Background**

- 1. This is an application by the Applicant in respect of complaints he has in relation to  
enforcement of the Letting Agent Code of Practice in respect of the Letting Agent's**

management of the Property. The Application is under Section 48 (1) of the Housing (Scotland) Act 2014 and is brought in terms of Rule 95 of the Rules.

2. The application is dated 17<sup>th</sup> December 2021.
3. The Applicant had previously submitted an application to the Tribunal which had been accepted for determination but was withdrawn by the applicant following upon certain procedure in the Sheriff Court. The reference for that case is FTS/HPC/LA/20/2493.
4. In short, parties had sought to come to settlement of the said case and the Letting Agent thought that it had an agreement for settlement and the Applicant considered that there was no such agreement. The Letting Agent raised an action of declarator in the Sheriff Court and the determination of the Court dated 5<sup>th</sup> October 2022 was that there had been a contractual agreement that the matter would be settled on the basis that the Letting Agent would pay the Applicant the sum of £3,914 and be responsible for payment of agreed legal fees. In the action of declarator, the Letting Agent was awarded expenses.
5. A Settlement Agreement dated 27<sup>th</sup> October 2021 was entered into between parties which stated *inter alia* that the Applicant would be paid £3,914 by the Letting Agent and would also be paid the sum of £ 480 inclusive of VAT in respect of legal fees once an appropriate VAT invoice had been produced. These sums reflected what had been determined by the Sheriff in the action of declarator.
6. Upon enquiry being made of it, the Applicant confirmed to the Tribunal that the sum of £3,914 had been paid to it by the Letting Agent and emails were exhibited which demonstrated that the Letting Agent was prepared to make payment in respect of legal fees but was awaiting the appropriate VAT invoice.
7. Section 5.1 of the said Settlement Agreement stated:

*This Agreement is in full and final settlement of all and/or any Claim which the Parties may have against each other, or against any group, associated, parent or subsidiary company of a Party or any successors, assignees, agent, representative or officer, director or employee of a Party or any successors, assignees, agent, representative or officer, director or employee of a Party, and the Parties hereby release and forever discharge the other from liability in relation to such a claim that there may be against each other or against any associated, party or subsidiary company of a Party or any successors, assignees, agent, representative, officer, director or employee of a Party.*

8. Section 4.1 of the said Settlement Agreement stated:

*“The Parties have resolved to settle the Dispute and have agreed terms in full and final settlement”* and went on to state that the application before the Tribunal

(FTS/HPC/LA/20/2493) would be withdrawn as a consequence of the Settlement Agreement being executed.

9. The Applicant confirmed that the application concerned matters arising prior to the execution of the Settlement Agreement on 27<sup>th</sup> October 2021.
  
10. The Applicant was asked to explain why it considered that the application should be accepted for determination notwithstanding the terms of the Settlement Agreement. It stated that the Settlement Agreement was to reflect the terms of the Sheriff's decision. It stated that the Sheriff Court judgement did not consider matters which were contained in the application now submitted to the Tribunal. The Applicant stated that it did not have legal representation when the Settlement Agreement had been signed and had been put under undue pressure to deal with it. The Applicant submitted a copy of an email to the Letting Agent's solicitor where it was suggesting that the solicitor had behaved improperly and in representations to the Tribunal stated that the Settlement Agreement should not be relied upon where there was improper conduct by one of the parties.
  
11. The Applicant invited the Tribunal to "balance the scale of justice in the judicial process" and allow the application to be accepted so that there could be a determination of whether or not there had been a breach of the Letting Agent Code of Practice and pointing out that this was not considered in the Sheriff Court action. The Applicant stated that, following upon a determination of the application by the Tribunal, it would seek to have the Settlement Agreement "rescinded" by the Sheriff Court.
  
12. The Applicant submitted a copy of the decision by Sheriff Holligan where he found that, in relation to the settlement discussions between the parties, there had been *consensus in idem* and agreement had been reached by them.

## Decision

13. The application is rejected.

## Reasons

14. Parties entered into a Settlement Agreement and they are bound by its terms. The Applicant concedes that the matters it seeks to have determined occurred prior to the execution of the Settlement Agreement.
  
15. Section 5.1 of the Settlement Agreement is decisive: *This Agreement is in full and final settlement of all and/or any Claim which the Parties may have against each other, ..... and the Parties hereby release and forever discharge the other from liability in relation to such a claim that there may be against each other.*



16. The terms of the Settlement Agreement are sufficient for the Tribunal to come to a determination on whether or not the application should be submitted for determination but it is helpful to consider the terms of Sheriff Holligan's decision: *"It is clear from the outset that the agreement would cover all matters between the parties and not just the dispute before the Tribunal."* In reference to the application before the Tribunal, the Sheriff means FTS/HPC/LA/20/2493.

17. It appears that the Applicant considers that it was not given the opportunity to have legal advice prior to signing the Settlement Agreement and that it may have some kind of complaint with regard to the actings of the Letting Agent's solicitor. These are not matters to be determined by the Tribunal

18. Rule 8(1) (a) of the Rules allows an application to be rejected by the Chamber President if it is considered that *"an application is vexatious or frivolous"*.

19. "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"*.

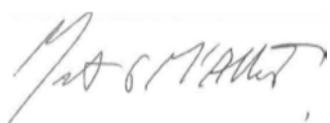
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**In respect of application by Toner Ltd, 1/2, 23 Milovaig Street, Glasgow, G23 5JA ("the  
Applicant") in terms of Rule 95 of the Rules.**

**Countrywide Residential Lettings Ltd, Countrywide House, Lake View Drive, Annesley,  
Nottingham, NG15 0DT ("the Letting Agent")**

**Case reference FTS/HPC/LA/21/3141**

**Address of Property: 0/2, 6 Harrow Place, Glasgow, G15 7DP (the "Property").**

**At Glasgow on 14<sup>TH</sup> March 2022, Martin Joseph McAllister, legal member of the First –Tier  
Tribunal for Scotland ("the Tribunal") with delegated powers of the Chamber President, rejected  
the above application in terms of Rule 8(1) (a) of the Rules.**

## **Decision**

**The Application is rejected.**

## **Background**

- 1. This is an application by the Applicant in respect of complaints he has in relation to  
enforcement of the Letting Agent Code of Practice in respect of the Letting Agent's**

management of the Property. The Application is under Section 48 (1) of the Housing (Scotland) Act 2014 and is brought in terms of Rule 95 of the Rules.

2. The application is dated 17<sup>th</sup> December 2021.
3. The Applicant had previously submitted an application to the Tribunal which had been accepted for determination but was withdrawn by the applicant following upon certain procedure in the Sheriff Court. The reference for that case is FTS/HPC/LA/20/2493.
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5. A Settlement Agreement dated 27<sup>th</sup> October 2021 was entered into between parties which stated *inter alia* that the Applicant would be paid £3,914 by the Letting Agent and would also be paid the sum of £ 480 inclusive of VAT in respect of legal fees once an appropriate VAT invoice had been produced. These sums reflected what had been determined by the Sheriff in the action of declarator.
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## Reasons

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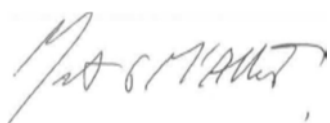
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**Case reference FTS/HPC/LA/21/3142**

**Address of Property: 1/4, 85 Keal Avenue, Glasgow, G15 6PA (the "Property").**

**At Glasgow on 14<sup>TH</sup> March 2022, Martin Joseph McAllister, legal member of the First –Tier  
Tribunal for Scotland ("the Tribunal") with delegated powers of the Chamber President, rejected  
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