

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/23/3846

Parties

Mrs Fiona Carruthers (Applicant)
Ms Lisa McGregor (Respondent)

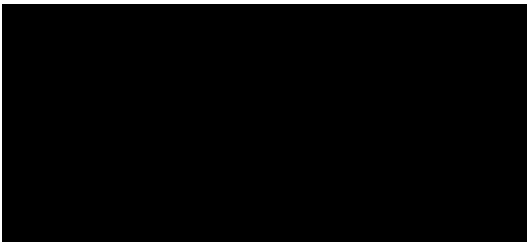
16 Ashgrove Crescent, Ecclefechan, DG11 3EA (House)

1. By application received on 1 November 2023 the Tribunal received an application for an eviction order from the Applicant. The application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The application was incomplete. On 27 November 2023 the Tribunal wrote to the Applicant requesting, amongst other documents, a copy of a valid Notice to Leave and evidence of service on the Respondent. The Tribunal noted that the Applicant had produced a letter with the application that did not constitute a valid Notice to Leave.
3. On 1 December 2023 the Tribunal received an amended application from the Applicant which was accompanied by a Notice to Leave in the prescribed form. The Notice to Leave was dated 30 November 2023 and stated that proceedings would not be raised any earlier than 27 November 2023.
4. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “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”.
5. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form. The Notice to Leave the Applicant has produced was purportedly served on the Respondent after the date of submission of the application, in response to the Tribunal’s request for further information.

6. The purpose of a Notice to Leave is to provide the tenant with fair notice of the landlord's intention to bring proceedings before the Tribunal. The Notice to Leave in this case is dated 30 November 2023, with the application having been lodged on 1st November 2023. Furthermore the date specified in the Notice to Leave following which proceedings can be raised is 27 November 2023. It does not provide the Respondent with the required notice under section 54(2) of the Private Housing Tenancies (Scotland) Act 2016. The Notice to Leave is therefore fundamentally invalid. Accordingly I do not believe the Tribunal can competently entertain the application.
7. It is open to the Applicant to make a new Application following service of a valid Notice to Leave. The Tribunal would encourage the Applicant to take independent legal advice going forward to ensure she is compliant with the statutory requirements.

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.



Ruth O'Hare, Legal Member

4 January 2024