



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 Mr Mark Porter in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/3423

At Glasgow on the 10 January 2024, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) a) and (c) of the Rules

1. This is an application by Mr Mark Porter for eviction in terms of rule 109 of the Rules. The application was made on 26 September 2023.
2. The application was incomplete. The Tribunal wrote to the Applicant on 29 September 2023 as follows:

The following further information is required from you before your Application can proceed to the Chamber President for consideration:

- evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant
- a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act
- evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority Please reply to this office with the necessary information by 6 October 2023, otherwise the application may be rejected.

3. The applicant responded on 2 October 2023 as follows:

Further to the email below regarding evidence that you require, (evidence of given notice to leave / a copy of notice given to the local authority) both documents were hand delivered signed and dated when received. notice to leave document was signed and dated by tenant and is consistent with his signature on the tenancy

agreement. all documents have already been submitted to you. please let me know if any further evidence or paperwork is required.

4. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 23 October 2023 seeking further information as follows:

Before a decision can be made, we need you to provide us with the following:

- Please confirm that the joint tenant is to be added as joint respondent as the application must be against both. If the joint tenant is not currently residing at the property, please provide her current address.
- Please clarify the position regarding service of the Notice to leave. If it was hand delivered, please confirm who delivered it and when. Please also confirm the position regarding service on the joint tenant.
- The application form refers to the landlord intending to sell due to financial stress. The Notice to leave refers to ground 1, the landlord intends to sell. Please clarify if you are proceeding on ground 1 or 1a or both. If you wish to include ground 1A, please note that this is not included in the notice to leave and you will require to address the Tribunal on whether this ground should be considered.
- Please provide evidence in support of ground 1, such as a copy of the contract with the selling agent.
- If you are also relying on ground 1A, please provide evidence of financial hardship.
- Please confirm if the joint owner is to be added as joint Applicant. Please reply to this office with the necessary information by 6 November 2023. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant responded on 3 November 2023 as follows:

Re the letter received 23rd October 2023 I have enclosed further information you have requested.

The notice giving was from Mr. and Mrs. Porter (joint owner) to Mr and Mrs Witham (joint tenants).

The letter regarding service of notice to leave was hand delivered by myself (Mark Porter) on the 25th June 2023 at approximately 7,30 pm to Mr Jim Witham. Mr Jim Witham signed the copy and stated that his wife was not around. This is a joint tenancy for Mr. Jim Witham and his wife Nadia Witham this means that both of them are being served this notice to leave.

I am selling the property privately to my daughter if you require evidence please contact Grigor & Young solicitor Elgin 01343 544077.

6. The in-house convenor reviewed the application again and a further request for information was sent to the applicant on 23 November 2023 as follows:

You have confirmed that the joint tenant is to be added as joint respondent please now provide her full name and address so that she can be added.

- Please also confirm if the joint owner and landlord Ms Linda Porter is to be added as a joint applicant and if so please provide her full name and address or if not please provide her consent to these proceedings being raised in your name alone.

- With regard to the Notice to leave please confirm when it was delivered to Mr Wham and please advise how this can be delivery on the second tenant if she was not there to receive a copy?
- You have not responded to the request as to whether you wish to proceeding on ground 1 or ground 1a or both. If you wish to include ground1A, please note that as this is not included in the notice to leave you will require to address the Tribunal on whether this ground should be considered and They will determine at a Case Management Discussion if this ground can be added. If you do add ground 1A and it is allowed by the Tribunal then if an order is granted the Cost of Living Act suspension requirements will not apply however they do apply to evictions granted on Ground 1 alone.
- With regard to the evidence we require for each ground of eviction you have advised you are selling the property to your daughter and asked us to contact a firm of solicitors. It is for the Applicant to provide evidence to support their case and we as an independent Tribunal cannot and do not seek such evidence. We require evidence to support the ground of eviction as part of our lodging requirements so please now let us have a letter from your solicitors confirming they are engaged to sell the property on your behalf or such other evidence to show this intention.
- If you are also relying on ground 1A, please provide evidence of financial hardship. Please reply to this office with the necessary information by 7 December 2023. If we do not hear from you within this time, the President may decide to reject the application.

7. The applicant has not responded.
8. 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”***.
9. *“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”*.
10. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. There is no evidence of service of the notice to leave on one of the tenants. No proof of the eviction ground has been provided.
11. Further, it terms of rule 8(1)(c) I consider that I have good reason to consider it is not appropriate to accept the application as it is incomplete and the applicant has failed to cooperate with the Tribunal in the execution of its duties.

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.



Legal Member