



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 Baird in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/24/0560

At Glasgow on the 17 April 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 Baird for eviction. The application was ostensibly in terms of rule 109. The application was made on his behalf by Mrs Elizabeth Cockburn of Cockburn and Company solicitors. The application was dated 1 February 2024, was received by the Tribunal on 5 February 2024.
2. I have reviewed the application today. The usual tribunal procedure would be for the in-house convenor to write to the applicant’s representative with a request for further information (such as to issue a reminder to the Tribunal’s request for information of 7 March 2024). It is not open for me to do that as in my view the application is time barred.
3. The application was made in terms of rule 109, which relates to private residential tenancy agreements. A private residential tenancy agreement can only be constituted after 1 December 2017. The application refers to an assured tenancy and an AT6 and section 33 notice have been lodged. The application also states that there is no written tenancy agreement and the tenancy commenced in 2014.
4. It therefore appears that the application should have been made under rule 66 or rule 65 of the rules as suggested by the Tribunal in their letter of 7 March 2024. The applicant’s solicitor did not respond to the letter and the application was not amended. I have treated this application as if it was amended to rule 66 or rule 65.

The AT6 lodged with the application is dated 18 May 2023 and states that eviction proceedings will not be raised before 26 July 2023.

5. Section 19 of the Housing (Scotland) Act 1988 ('the Act') provides:

Notice of proceedings for possession.

(1)The **[F1First-tier Tribunal]** shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a)the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b)**[F2the Tribunal]** considers it reasonable to dispense with the requirement of such a notice.

(2)The **[F3First-tier Tribunal]** shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground **[F4and particulars of it are]** specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the **[F3Tribunal]**.

(3)A notice under this section is one **[F5in the prescribed form]** informing the tenant that—

(a)the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b)those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4)The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a)two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b)in any other case, two weeks.

F6(5).....

(6)Where a notice under this section relating to a contractual tenancy—

(a)is served during the tenancy; or

(b)is served after the tenancy has been terminated but relates(in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7)A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

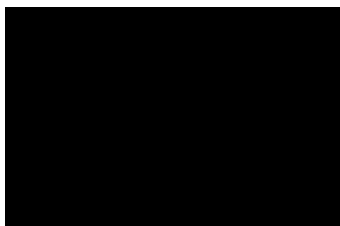
6. In particular, in terms of section 19(7) of the Act, an AT6 ceases to have effect 6 months after the date on which proceedings could have been raised. The AT6 is only valid for 6 months from 26 July 2023 which means that it expired on 26 January 2024. It is therefore not possible for the Tribunal to entertain the application. There is no discretion. The applicant is referred to page 241 of 'Evictions in Scotland' By Stalker in this regard.
7. 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”***.
8. “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”.
9. I consider that this application is misconceived and has no reasonable prospect of success. The application is time barred as more than 6 months have passed since the notice period on the AT6 expired. Six months from 26 July 2023 is 26 January 2024. The application was not sent to the Tribunal until 1 February 2024.
10. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is time barred and the Tribunal has no discretion to extend the time limit in terms of section 19 of the Act. (There is a similar provision relating to notices to leave in section 55 of the Private Housing (Tenancies) (Scotland) Act 2016). Further, even if time bar had not been an issue, there is no notice to quit and this is problematic given the terms of section 18(6) of the Act and the lack of a written tenancy agreement.

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