



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 Shafqat Ali in terms of Rule 109 of the Rules.

Case reference FTS/HPC/EV/24/0549

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) of the Rules.

1. This is an application for eviction by Mr Shafqat Ali in terms of rule 109. There was a separate application in terms of rule 111 in respect of rent arrears under reference CV/23/0546.
2. The application was dated 4 February 2024 and received by the Tribunal on 6 February 2024.
3. The application was accompanied by the following:-
 - Tenancy agreement for let of the property from 1 February 2016 until 31 January 2017.
 - Notice to leave dated 11 November 2023.

4. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 7 March 2024 as follows:

A Legal Member of the Tribunal with delegated powers of the Chamber President has now considered your two applications and has requested the following further information:-

EV/24/0549

- You have submitted an application under Rule 109, which relates to Private Residential Tenancies (tenancies created after 1 December 2017). However, the tenancy agreement you have submitted in support of your application is a Short Assured Tenancy which started on 1 February 2016. It is therefore necessary for you to serve the relevant Notices on your tenants under the Housing (Scotland) Act 1988 (which relates to Assured and

Short Assured Tenancies) as a Notice to Leave is only valid in relation to a Private Residential Tenancy. You would then have to apply to the Tribunal under the correct Rule (65 or 66) by submitting a fresh application with supporting documentation. You may wish to withdraw the current application until you have attended to this, as it cannot progress further as it stands. You may also wish to seek some legal or other advice in this matter before you proceed further.

CV/24/0546

- You have submitted an application under Rule 111 for a payment order against your tenants, but it appears from what you have stated in the application form that this application is premature, as your tenants do not appear to owe you any money for rent arrears or otherwise, at the present time. Again, you may wish to withdraw this application meantime and proceed with a fresh application at a later date, if this becomes necessary.

Please respond within 14 days to advise of your intentions in relation to both applications and confirm if you are withdrawing both applications at the present time. Alternatively, please clarify your position. If you fail to respond within 14 days, please note that your applications may be rejected.

Please reply to this office with the necessary information by 21 March 2024.

5. The applicant responded on 18 March 2024 by providing a copy of a notice to quit and section 33 notice. I have reviewed this application today and I have decided to reject it.
6. 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”.
7. I consider that this application is hopeless and has no reasonable prospect of success. Rule 109 does not apply as a private residential tenancy agreement has not been constituted. A private residential tenancy agreement can only be constituted if the tenancy agreement was entered into after 1 December 2017. The tenancy agreement lodged is headed ‘Short Assured Tenancy Agreement’ and it is dated February 2016. It is likely to be an assured tenancy constituted under the Housing (Scotland) Act 1988 rather than the Private Housing (Tenancies) Scotland Act 2016. That means the applicant will have to reapply to the Tribunal under rule 65 or 66.

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