



**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 Jonathan Porter in terms of rule 65 of the Rules.

**Case reference FTS/HPC/EV/20/0328**

At Glasgow on the 16 March 2020, 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 Jonathan Porter, for recovery of possession of the property at 77 Harburn Drive West Calder West Lothian EH55 8AN in terms of Rule 65 of the rules.
2. The application was made on 31 January 2020.
3. No documents accompanied the application but it stated that it was seeking an eviction on ground 10 (tenant has given notice to quit which has expired).
4. The tribunal wrote to the applicant on 3 February 2020 seeking : a copy of the tenancy agreement; a copy of the AT6; a copy of the notice to quit and evidence that the eviction ground was met.
5. The applicant wrote to the tribunal on 7 February 2020 with: a copy of the AT6; a copy of the tenancy agreement; a copy of the s33 notice and a copy of an undated letter to the tenant stating that the application was applying to the tribunal for eviction proceedings.
6. No proof of service of the AT6 or s33 notice was produced. No notice to quit by the tenant (or by the applicant) was produced.

7. The AT 6 lodged by the applicant does not refer to ground 10. In part 2 the grounds for possession noted on the AT 6 is " the house has been sold'. Part 3 of the AT6 states " Your notice has previously been given and disputed, the house is due to be sold on the 29<sup>th</sup> of January 2020 I have decided to extend your right to be there for one month giving you a further one months' notice (till 24/1/20) from now provided the rent is not kept in arrears.
8. The tribunal wrote further to the applicant on 18 February 2020 pointing out that no notice to quit had been produced, the AT 6 is incomplete and does not tie in with the application. The applicant responded on 21 February 2020 with further copies of the same documents.
9. The applicant sent a further email on 2 March 2020 which stated:

*I am forwarding all the documentation I have again. If you look at page 2 of the AT6 form Tina file you will see the ground for eviction is.*

*That the house has been sold*

*And secondary ground of,*

*The notice was previously given and ignored. I have mislaid the original usb drive with copies of the original paper work sent to the tenant.*

10. No further documentation has been produced by the application. He has failed to provide the documentation to satisfy the eviction ground despite two letters from the tribunal.
11. Rule 65 of the rules has a list of documents that must accompany an application. The applicant has provided a copy of the tenancy agreement and an AT6 (which does not tie in with the ground contained in the application). The applicant has failed to provide any other documents required to enable the application to proceed in terms of rule 5.
12. 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**".
13. "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".
14. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept the application.
15. **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.

Lesley Anne Ward

Legal Member