



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 Mrs Wendy Paterson in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/2611

At Glasgow on the 29 August 2022, 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 Mrs Wendy Patterson for eviction in terms of rule 109. The application was made on her behalf by Mr Kevin Lancaster Solicitor of Watson and Lyall Bowie Solicitors. The application was dated 29 July 2022 and was added to the case management system of the Tribunal Chamber on 1 August 2022.
2. I have reviewed the application today and it is incomplete and cannot be accepted in its current form for a number of reasons:
 - It is noted in the application that there is no lease available. No information regarding the terms of the tenancy agreement have been provided to enable the tribunal to be satisfied that a private residential tenancy has been constituted.
 - A photo has been lodged which appears to be one of the joint tenant’s receiving the notice to leave. No details regarding service of the notice to leave have been lodged.
 - The notice to the local authority required in terms of s 56(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (‘the Act’) is not in the correct form.
 - There are two owners of the property and the application has only been made in the name of one of them.

3. The usual tribunal procedure would be for the inhouse convenor to write to the applicant's solicitor raising these matters pending acceptance of the application and when a satisfaction answer is received, the application can be accepted. It is not open for me to do that as in my view the application is time barred.
4. The notice to leave lodged is dated 16 August 2021 and it states that an application for eviction will be made to the tribunal no earlier than 19 February 2022. An application is 'made' in terms of rule 5 of the rules if it is lodged in the manner set out in the rules. This application has not been lodged in accordance with rules 109 and 5 as things currently stand and is not yet 'made'.
5. Section 55 of the Act provides:

55 Restriction on applying 6 months after the notice period expires

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.
- (2) In subsection (1), "the relevant period" has the meaning given in section 54(2).
- (3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

6. Section 52 of the Act provides:

52 Applications for eviction orders and consideration of them

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
 - (a) subsection (3), or
 - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
 - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

7. More than 6 months have elapsed since the notice to leave expired. It is therefore not possible for the tribunal to entertain the application. There is no discretion. The applicant is referred to page 318 and 319 of 'Evictions in Scotland' By Stalker in this regard.
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 misconceived and has no reasonable prospect of success. The application is incomplete and cannot be accepted in its current form.
11. 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 s55 of the Act.

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

