



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 Ms Shabana Amin in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/3494

At Glasgow on the 31 October 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 Ms Shabana Amin for recovery of possession of the property at 77 Balgray Crescent Barrhead Glasgow G782ND ‘the property’, in terms of Rule 66.
2. The application was dated 16 September 2022 and received by the tribunal on that date.
3. The only document accompanying the application was a copy of the s11 notice sent to the local authority.
4. The tribunal sent an application incomplete letter on 28 September 2022 as follows:
The following further information is required from you before your application can proceed to the Chamber President for consideration:
 - The tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give
 - The notice by landlord that the tenancy is a short assured tenancy (AT5)
 - Notice to Quit
 - The notice given to the tenant under section 33(1)(d) of the 1988 Act

5. The applicant responded on 30 September 2022 by sending a copy of the s33 notice. She stated that she did not have a copy of the tenancy agreement as it was saved on an old laptop. She also stated that the notice to quit was issued in February 2022. No notice to quit was produced and no other information was provided.
6. I reviewed this application as in-house convenor today. There are a number of difficulties with this application which have led me to reject it.
7. Firstly, the applicant has not provided a copy of the notice to quit or any details of the terms of the assured tenancy. The applicant has also failed to provide the AT5. If the tenancy agreement has not been brought to an end an application for eviction cannot succeed. Without a valid notice to quit having been served the short assured tenancy (assuming that short assured tenancy has been constituted as no AT5 has been produced) is continuing. The applicant was asked for the notice to quit and produced a copy of the s33 notice and a copy of an envelope address to the respondent. That does not constitute proof of service of the s33 notice. I also note the s33 notice is incomplete as it does not state when the tenancy commenced.
8. It is possible that the applicant meant to proceed in terms of rule 65 as the application states that the applicant wishes to sell the property. The application also states that it is proceeding on ground 1. Ground 1 for an assured tenancy is that the landlord wants the property for his or her own home. The landlord wanting to sell is not a valid eviction ground in terms of the Housing (Scotland) Act 1988. An amended application in terms of rule 65 would not therefore succeed.
9. 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”.
10. I consider that this application is hopeless 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 this application. The applicant has failed to respond to a request by the tribunal for further information.

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