



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 Theresa Mary McWilliams of Trainor Alston on behalf of EHi Properties Ltd , ostensibly in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/0172

At Glasgow on the 19 April 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 Theresa Mary McWilliams of Trainor Alston Solicitors on behalf of EHi Properties Ltd , ostensibly in terms of rule 109 of the Rules for recovery of possession of the property at 9 West Drive Dingwall IV15 9RN.
2. The application is dated 19 January 2022 and was received by the tribunal on 21 January 2022.
3. The application was accompanied by the following:-
 1. Tenancy agreement.
 2. Notice to quit.
 3. AT6
 4. Summary of complaints.
 5. Rent statement.
 6. Letter regarding antisocial behaviour.

4. The tribunal noted that the application was in terms of rule 109 and the tenancy agreement was dated 1 March 2019 and appeared to be a Private Residential Tenancy Agreement, however no notice to leave had been lodged. The applicant had lodged a notice to quit and AT6 which did not appear to be relevant. The tribunal wrote to the applicant's solicitors on 4 February 2022 as follows:

" 1. You have submitted a Notice to Quit and AT6 notice. However, these notices are not relevant to an application under Rule 109 and a tenancy which started after 1 December 2017. Please provide a copy of a Notice to leave which has been served on the Respondent, with evidence of service. An application under Rule 109 cannot proceed without a valid Notice to leave which specifies all of the eviction grounds which are relied on. If you have not served a Notice to leave please confirm if you wish to withdraw the application and re-submit it after the notice has been served and the notice periods have expired.

2. If the application is to proceed, please note the following;-

(a) Please confirm if you wish to amend the application to include the joint tenant. An application against only one of the joint tenants is not competent. Please provide a paper apart or amended form.

(b) Please provide a copy of the section 11 notice and evidence that it was sent to the Local authority.

(c) The owners of the property appear to be Marjory and Angus MacLeod. Please confirm that the application should be amended to reflect this, and provide contact details.

(d) Please provide evidence of landlord registration

. (e) Evidence is required for all eviction grounds which are referred to in the application. Please provide a rent statement for ground 12. This should show the rent due, the payments made and the running total outstanding for the relevant period. For ground 1, a copy of the Home report or contract with the selling agent may be provided. For ground 11 please confirm which terms of the tenancy have been broken and provide evidence. Please note that ground 11 does not apply to rent arrears. The documents provided appear to provide information about antisocial behaviour but not evidence, Please provide evidence such as statements from other residents or witnesses to the antisocial behaviour. Please note that the names and contact details of third parties can be redacted at this stage unless they have given consent for their names to be used. This includes the documents already submitted which you may wish to replace with redacted versions. (f) Please provide evidence of compliance with pre action requirements. Again, some information appears to have been submitted but not copies of the relevant letters or emails.

5. The applicant's solicitors did not make a substantive response but wrote on 22 February 2022 requesting a further 4 weeks to enable them to take their client's instructions as he was currently in Mexico. The tribunal provided a further 21 days for a response on 7 March 2022. No further information has been received.

6. This application is incomplete as there is no notice to leave. The applicant's solicitors have failed to deal with the reasonable request by the tribunal for further information.

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”***. “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”.

8. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. The essential information has not been provided despite a request made on 4 February 2022 and a 21 day extension. 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 at best it is incomplete.

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.

L. W

Lesley Anne Ward

Legal Member