



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 David Blackwood in terms of Rule 109 of the Rules.

Case reference FTS/HPC/EV/22/0248

At Glasgow on the 21 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 Mr David Blackwood for eviction proceeding in connection with a private residential tenancy agreement (‘PRT’) in terms of rule 109 of the tribunal rules. The application was made on 26 January 2021 and received by the tribunal on 27 January 2022.
2. The application was accompanied by the following:
 - (a) Notice to leave.
 - (b) PRT.
 - (c) Residential Tenancy Application.
3. The tribunal wrote to the applicant on 15 February 2022 as follows:

‘Your application has been assessed by a legal member who has requested the following information or documentation:

 - 1. The Notice to Leave is not in the correct form as required by the Private Housing (Tenancies) Scotland Act 2016. Please provide written representations as to why you consider the Notice to Leave to be valid.*
 - 2. The Notice to Leave and the application form state that the application is made under Grounds 11, 12 and 14. The Notice period for an application under Grounds 11 and 12 is six months. You have not given the requisite period of notice for those Grounds. Ground 11 cannot be used in respect of rent arrears. Ground 14 has a 28 day notice period, provided it is the only Ground on the Notice to Leave. Please provide clarification in this regard.*

3. *There are two tenants but you have only included one Respondent on the application form. Please indicate whether you wish to proceed against both tenants.*
 4. *You must provide evidence of service of the Notice to Leave upon the tenants.*
 5. *You have not provided a section 11 notice to the local authority as required by section 60 of the 2016 Act. You also require to provide evidence of service of said notice on the local authority.*
 6. *The landlord registration number provided is not showing up on the Landlord Registration website. Please ensure that the correct number has been provided.*
 7. *You have not provided any supporting evidence of anti-social behaviour, which is required before an application can be accepted. This may be in the form of photographs, diaries and/or witness statements.'*
4. The applicant did not respond to the letter and a reminder was sent on 21 March 2022. The applicant has failed to respond.
 5. As things stand, the notice to leave is not in the proper form, there is no evidence of service of the notice to leave and the notice period is incorrect. Further, an application cannot proceed without a s11 notice on the local authority in terms of s56 of the Private Housing (Tenancies) (Scotland) Act 2016.
 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”***.
 7. “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 frivolous or vexatious and has no reasonable prospect of success as the essential information required for it to proceed has not been provided, despite reminders sent by the tribunal. 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 incomplete and the applicant has failed to cooperate with the tribunal in the execution of its duties.

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