



**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 Nassir Ellahi in terms of rule 109 of the Rules.

Case reference **FTS/HPC/EV/22/2845**

At Glasgow on the 23 November 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 Nassir Ellahi for eviction in terms of rule 109 of the Rules. The application was made on 16 August 2022.
2. The application was not complete. The tribunal chamber wrote to the applicant on 16 August 2022 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- EVIDENCE SHOWING THAT THE EVICTION GROUND OR GROUNDS HAS BEEN MET
- A COPY OF THE NOTICE TO LEAVE GIVEN TO THE TENANT AS REQUIRED UNDER SECTION 52(3) OF THE 2016 ACT
- A COPY OF THE NOTICE GIVEN TO THE LOCAL AUTHORITY AS REQUIRED UNDER SECTION 56(1) OF THE 2016 ACT

Please reply to this office with the necessary information by 23 August 2022, otherwise the application may be rejected.

3. No response was received although the applicant's son wrote to the tribunal on 22 September 2022 seeking information. The tribunal chamber wrote requesting a mandate from the applicant authorising him to act on his behalf. The mandate was supplied on 3 November 2022.
4. In the meantime the in-house convenor reviewed the application and the tribunal wrote to the applicant on 2022 seeking further information as follows:

- On 16th August 2022, you were asked to provide information:
  - EVIDENCE SHOWING THAT THE EVICTION GROUND OR GROUNDS HAS BEEN MET • A COPY OF THE NOTICE TO LEAVE GIVEN TO THE TENANT AS REQUIRED UNDER SECTION 52(3) OF THE 2016 ACT
  - A COPY OF THE NOTICE GIVEN TO THE LOCAL AUTHORITY AS REQUIRED UNDER SECTION 56(1) OF THE 2016 ACT. You have not responded. A legal member of the Tribunal with delegated powers of the Chamber President has now considered the application and the documentation submitted with it. It has been determined that further information is required before a decision can be taken with regard to whether or not the application can proceed to determination:
    1. You state that one of the grounds upon which you are seeking eviction is Ground 1 of Part I, Schedule 3 of the Private Housing (Tenancies) Act 2016 ( "the 2016 Act"). In relation to that ground you give information about wanting to move into the property. Ground 1 relates to a landlord's intention to sell a property. Please clarify the position.
    2. Ground 10 relates to a tenant not occupying a tenanted property. Your application provides no detail of this. Please clarify the position.
    3. You have submitted a letter to the tenant dated 1st March 2022 which was posted on 3rd March 2022 and delivered the next day. It purports to give the tenant three months' notice to vacate the property. it does not, given that it was delivered on 4th March 2022.
    4. In March 2022 the notice period for Grounds 1, 11 and 12 was six months.
    5. You require to provide evidence showing that the grounds for eviction have been met.
    6. You have not provided a copy of the Notice to Leave required by Section 52(3) of the 2016 Act and you also require to provide proof of service on the tenant.
    7. In terms of Section 56(1) of the 2016 Act you require to give the appropriate notice to the local authority that you intend to make application to the Tribunal for an eviction order. The notice requires to be in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003. Please reply to this office with the necessary information by 6 October 2022. If we do not hear from you within this time the President may decide to reject the application.

5. The applicant has not provided any of the requested documentation to the tribunal. The applicant wrote to the tribunal on 3 November 2022 stating that the tenant has left the property. He also states in the email that he is seeking advice from the tribunal regarding how to proceed.
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 two detailed requests for information

being 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. It also now appears that the respondent has now left the property and the eviction application is no longer required. The applicant has failed to withdraw the application. Accordingly I am rejecting it.

**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