



**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 Beauty Bhowmik in terms of rule 109 of the Rules.

**Case reference FTS/HPC/EV/22/1669**

At Glasgow on the 26 July 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) of the Rules

1. This is an application by Mrs Beauty Bhowmik for eviction proceedings in terms of rule 109 of the Rules. The application was made on 30 May 2022.

2. The application for eviction was on the basis of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, ('the Act'), that the tenant has been in rent arrears of at least one month's rent for a period of three months. The notice to leave was dated 28 April 2022 and it was served on 29 April 2022 by Royal Mail track and trace. It stated at part 3:

*Mr Aaron George Blake did not pay any rent of three consecutive months from 27/02/2022 to 27/04/2022. The total rent amount of £1425.00( £475/ calendar month) is not paid on due date which was 27th of each month in advance. According to tenancy agreement point number 2.20, Mr Aaron Blake also suppose to pay interest on due amount at the rate of 4% above the Base Lending Rate for the time being of the Landlord's Bankers upon any rent money due and it will be charged on a daily basis from when it became due to the date of payment. I tried to communicate with him by sending email and text messages. I called on his mobile number for few times and left voice messages as well but did not get any response from him. He has breached the term of the tenancy agreement of 2.1.*

3. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 17 June 2022 seeking further information as follows:

*With regard to the eviction application*

*a. You are applying for an eviction order on the basis of 3 months rent being in arrears. Could you please provide a rent statement showing how the ground of eviction is met? Please note that rent has to be a full 3 months in arrears and not just 3 months owing ie one month is owing one month after the date it is due.*

*b. The S11 notice to the local authority does not appear to have been completed fully ie you have not confirmed which tenancy section you are notifying them under. For your information for a Private Rented tenancy the section for notifying a local authority is S56 of 2016 Act. Please provide a fresh s11 notice duly completed and proof of sending this to South Lanarkshire Council.*

*c. Please provide a copy of the certificate of posting the notice to leave.*

*2. With regard to the civil application can you please provide a rent statement in the format of rent due each month, rent paid each month and the running balance. You may wish to take legal advice from a solicitor or other agency such as citizens advice bureau as the grounds of eviction can be complicated.*

3. The applicant responded by providing some further information and in particular a rent statement.

4. According to the tenancy agreement the rent is due in advance on the 27<sup>th</sup> of each month. The monthly rent was £475. The rent statement sets out when the arrears began to accrue. The March 2022 payment of rent was due on 27 February 2022 and was not paid. The April 2022 rent payment was due on 27 March 2022 and this was not paid. The May 2022 rent payment was due on 27 April 2022 and at the date of notice to leave of 29 April 2022 this was not paid. At the date of service of the notice to leave it appears that there were rent arrears of £1425. At the date of the notice to leave there had been rent arrears since 27 February 2022, a period of two months.

5. Ground 12 of schedule 3 of the Act provides:

*Rent arrears*

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

6. Given that the rent arrears were only outstanding for a period of two months from 27 February 2022 until 27 April 2022 at the point that the notice to leave was served on 29 April 2022, I am not satisfied that the eviction ground was met on that date. The circumstances of this application are very similar to those in the Upper Tribunal Case of *Majid v Gaffney* [2019] UT 59. In that case the arrears of rent started on 30 April 2019 and the notice to leave was dated 1 July 2019. The sheriff noted that the tenant must be in arrears for three consecutive months for ground 12 to be applicable and the three month period would not be satisfied until 30 July 2019. It was held that:

*The statutory provision is clear which is that the ground of eviction must be satisfied at the date of the Notice to Leave. If it is not it is invalid. ...it could never have been intended by Parliament that a landlord could serve a notice specifying the ground not yet available in the expectation that it may become available prior to the making of the application. Such an approach would be open to significant abuse. Either the ground exists at the time when the Notice to Leave is served or it does not. If it does not the Notice to Leave is invalid and cannot be founded on as a basis of for overcoming security of tenure.*

7. On the basis of this reasoning I am not satisfied that the notice to leave is valid given the three months would not be satisfied until 27 May 2022. I note that in the more recent case of

Raffique v Morgan [2022] UT 6 the Upper Tribunal again confirmed that the eviction ground must be met at the date of service of the notice to leave.

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”.

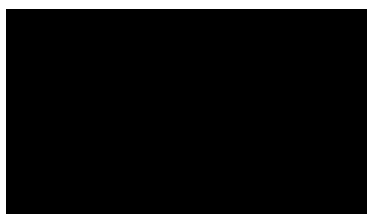
10. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as the notice to leave is invalid and cannot be relied upon.

**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

