

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

Under Rule 5 and 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

Flat E, 251 Kelvindale Road, Glasgow G12 0QU

Case Reference: FTS/HPC/EV/19/2054

GRAHAM AND ANNE HUTCHISON ("the applicant")

BRIAN AND SHARON WARWICK ("the respondent")

1. On 2nd July 2019, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules being an application being an application for eviction in relation to a private rented tenancy. The ground of eviction set out in the application is that "the only rental payment received was late and 3 months are outstanding."
2. The Applicant lodged a copy of the tenancy agreement between the parties ; a copy of the Notice to Leave (and recorded delivery receipt) and a copy of the section 11 Notice to the Local Authority.
3. By letter dated 4th July 2019 the Tribunal administration requested from the Applicants evidence showing the eviction ground or grounds have been met. A

response was requested by 11th July 2019 “otherwise the application may be rejected.” No response was received by the Applicant.

4. A further request was made for information on 2nd August when the Applicant was requested to provide:-

- a. A legible copy of the tenancy agreement
- b. Evidence that the owners are aware of the lease and consent to the application being made
- c. Evidence of service of section 11 notice on the local authority
- d. Written authority from the owners of the property that the applicants are authorized to act as their representatives in this case.

The letter requested a response by 16th August failing which “ the President may decide to reject the application.”

5. The Applicant responded on 23rd August lodging the following documents:-

- a. A fresh application for eviction under Rule 109 dated 23rd August 2019 referring to Ground 12 rent arrears as the ground of possession.
- b. A rental statement showing arrears as at 23rd September of £2927.05
- c. A fresh notice to leave dated 22nd August 2019 stating that an application for an eviction order will not be sought before 27th September 2019. (the end of the notice period)
- d. A certificate of posting and track and trace showing the Notice to leave was delivered on 23rd August 2019
- e. Section 11 notice to Glasgow City Council

Decision

6. In terms of Rule 109 it is a mandatory ground that the application be accompanied by evidence showing that the eviction ground or grounds have been met.

7. The Applicant has now lodged a fresh Notice to Leave and application which supersedes the previous Notice and application. The Notice period in the Notice to Leave does not expire until 27th September 2019 therefore this application is premature and does not comply with the mandatory rules of rule 109.

8. I next considered the application in terms of Rule 5 and Rule 8 of the Procedural Rules

"Rejection of application

9. Rule 5 provides:-

"Requirements for making an application:

1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement."

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar

application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

10. After consideration of the application I consider that the application does not meet the mandatory requirements of Rule 109 for the reasons set out above and may not therefore be accepted in terms of Rule 5(3).
11. In addition the Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
12. The applicant has failed to respond to all of the Tribunal's request for further information, which information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe, even if it could be considered that the application meets the minimum mandatory requirements of rule 109, the application would also fall to be rejected in terms of rule 8c on the basis that standing the lack of response from the Applicant as to documentation and information requested in the Tribunal's letter of 2nd August as per paragraph 4 above, it would not be appropriate to accept the application.

13. It is suggested that if the Applicant chooses to resubmit the application after the period of notice expires in the Notice to Leave that they should ensure the responses requested as per the Tribunal's letter of August 2nd are also addressed. If the Applicant has no better copy of the lease they need to explain that position.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the 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 first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

J Todd

Jan Todd
Legal Member
5th September 2019