



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 Stephen Kelly in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/2780

At Glasgow on the 2 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 Stephen Kelly, the owner of the property at 59 Carvale Avenue Salsburgh Motherwell ML7 4NF ‘the property’, for recovery of possession of the property in terms of Rule 66 of the Rules. The application was made on his behalf by Miss Louise Gillies of Ness Gallagher Solicitors.
2. The application was dated 9 August 2022 and received by the tribunal on 11 August 2022.
3. The application was accompanied by the following:-
 1. A portion of an AT5.
 2. S33 notice dated 25 January 2022.
 3. AT6 dated 25 January 2022.
 4. Notice to quit dated 24 January 2022.
 5. S11 notice
4. The application was incomplete and it also appeared to be a combination of both rule 65 and rule 66. The tribunal wrote to the applicant on 14 September 2022 as follows:
 - Please provide a copy of the tenancy agreement

- Please provide evidence of service for the notice to quit
- The section 33 notice which you have provided does not provide sufficient notice to the tenant. It was dated 25 January 2022, the extended notice periods as set out in the Coronavirus (Scotland) Act 2020 applied at that date and 6 months' notice was required when relying on a section 33 notice. Please therefore provide a copy of a section 33 notice with the correct notice period (6 months for notices served before 30 March 2022; 2 months for notices served after 30 March 2022) together with evidence of service; or consider withdrawing the application and reserving the section 33 notice (the current notice provisions are 2 months).
- The AT6 Notice submitted refers to ground 10 - this ground applies where the tenant has given notice to quit and then not left the property. If this ground Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk applies please provide a copy of the notice to quit received from the tenant. Please also provide evidence of service a copy of the AT6 notice.
- Please provide evidence of service for the section 11 notice. 6. Please provide a rent statement, showing monthly rent due, monthly rent paid, monthly amount outstanding and cumulative total.

5. The applicant's solicitor responded on 28 September 2022 as follows:

- Our client did not have a further tenancy agreement to the AT5 that has been provided prior
- See attached the evidence of service for notice to quit
- We have sent a further s33 notice with the amended dates, evidence of service is to be provided. The amended notice is attached hereto.
- We attach copy of the AT6 served upon the tenant and confirmation of service
- We attach evidence of service for s.11 notice
- Our client did not have a rent statement to provide

6. I have reviewed this application today. There are a number of difficulties with the application that have led me to reject it. Firstly, I am not satisfied on the information provided that a short assured tenancy has been constituted. No tenancy agreement has been provided and no information regarding the tenancy has been provided in its place beyond a portion of the AT5. Secondly, I cannot be satisfied that the notice to quit ties in with the ish date. Thirdly, no proof of service of the notice to quit and s33 notice have been provided. Fourthly, no rent statement has been produced that may have been helpful in assisting the tribunal in determining the reasonableness of the application.

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".

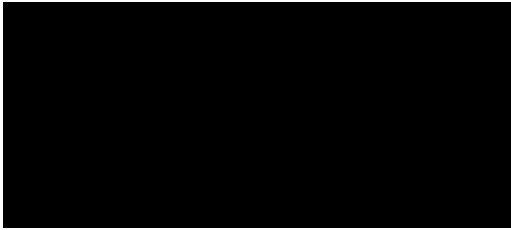
8. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application.

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.



Legal Member