



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 Brian Shields of Heliox Property Limited in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/3069

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 Brian Shields of Heliox Property for eviction in terms of rule 109 of the Rules.
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 23 September 2022 seeking further information as follows:

Before a decision can be made, we need you to provide us with the following:

- Please provide a copy of the tenancy agreement.
- The Notice to Leave is undated and unsigned. Please provide a signed and dated copy.
- There is reference to two tenants, yet you have only included one in the application form. Please confirm that you wish to proceed against both tenants, providing their full details.
- You mention in correspondence to the local authority that the Notice to Leave was hand delivered to the Property. The Private Housing (Tenancies) (Scotland) Act 2016 does not provide for hand delivery to the property as a method of service of such notices. Given the defect in service of the Notice to Leave, and the fact that it would appear the tenants had already left the country and could not have received the notice, please provide your written representations on whether the application can legitimately proceed.

- Please provide a current address for the Respondent(s), as required by our rules.
- You have not used the usual template for serving a section 11 notice, and it would appear that some of the necessary information is missing. Please consider the template, and whether a further notice requires to be served.
- Please provide a rent statement with columns showing rent due, rent paid and a running total of rent arrears.
- Please confirm whether the Applicant has complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and provide evidence of this, if available. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant the order.

3. The applicant has not responded to the letter.

4. No further documentation has been received since.

5. 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*'.

6. "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".

7. 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 a detailed request 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.

8. It is open for the applicant to resubmit the application with the correct supporting documentation.

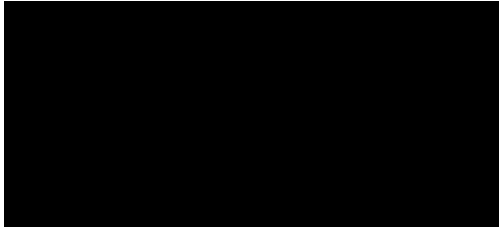
NOTE: What you should do now.

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