



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 70 of the Rules.

Case reference **FTS/HPC/EV/22/2781**

At Glasgow on the 9 January 2023, 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 in terms of rule 70 to recover rent arrears. The application was made on his behalf by Ms Louise Gillies of Ness Gallagher solicitors.
2. The inhouse convenor reviewed the application and the tribunal wrote to the Applicant's solicitors on 4 November 2022 seeking further information as follows:

Rule 70 requires an Applicant to provide evidence in support of the application. In applications for payment orders the Tribunal requires this evidence to be in the form of a rent statement which has been prepared by the Applicant or on his behalf. This should show rent payments due, the payments received and the running total outstanding for the whole period that the Respondent has been in arrears. Please provide this or the application may be rejected. Please reply to this office with the necessary information by 18 November 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. No response was received. The Tribunal sent a reminder on 8 December 2022 as follows:

Your application for a payment order under case reference FTS/HPC/EV/22/2781 has been further reviewed by the In-House Convenor. We note that you have failed to respond to our letter of 4 November 2022 asking you to provide further information by 18 November 2022. Can you please advise the tribunal whether you are now in a position to provide the additional information which was initially requested in terms of our letter of 4 November 2022 Upon receipt of the above information, a final decision can then be taken on whether your application is valid and whether it should be accepted and referred to the tribunal for full determination. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 Please reply to this office with the necessary information by 22 December 2022.

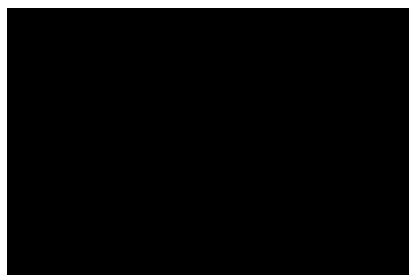
4. No reply has been received.
5. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if '*they consider that an application is vexatious or frivolous*'.
6. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (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 being sent by the Tribunal, and a detailed reminder. 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 or their delegated representative 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