



**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 an Application by Mrs Penelope Gwyneth Henderson Gray in terms of rule 109 of the Rules.

**Case reference FTS/HPC/EV/22/4066**

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 Mrs Penelope Gwyneth Henderson Gray for eviction proceedings. The application was made on her behalf by Mrs Melanie Connolly of Glow Homes Letting and Sales LTD.
2. The inhouse convenor reviewed the application and the Tribunal wrote to the Applicant’s representative on 6 December 2022 seeking further information as follows:

Your application has been assessed by a legal member who has requested the following information or documentation:

- The Notice to Leave appears to give 3 months’ notice, which is incorrect for this ground of eviction. Please provide your written representations as to the validity of the Notice to Leave, and consider whether you wish to withdraw the application and serve a further Notice to Leave allowing the correct period of notice.
- Please provide evidence of service of the Notice to Leave upon the Respondent. You have not included the email to which you refer in your application.
- Your application was received after the commencement date of The Cost of Living (Protection for Tenants) (Scotland) Act 2022. This means that, although an eviction order may be granted under ground 12, it cannot be executed for 6 months unless the provisions of the legislation are suspended before that time. The available options are:-

- (i) Proceed with the application although any eviction or possession order will be affected by the delay in enforcement provisions,
- (ii) Withdraw the application and submit a fresh application when you have served a Notice on the Tenant on one of the new grounds or a ground which is not affected by the delay in enforcement provisions, Supported by the Scottish Courts and Tribunals Service [www.scotcourtribunals.gov.uk](http://www.scotcourtribunals.gov.uk)
- (iii) Proceed with the application and ask the Tribunal to allow the application to be amended to include new or different grounds and/or consider a ground which was not specified in the Notice which was served. For example, if you have based the application on ground 12, you could ask the Tribunal to allow you to add or substitute the new ground 12A. Please be aware that should this option be chosen, the Tenant can object to any amendment and whether or not the Tenant objects, the Tribunal may not give consent to allow such an amendment of the application.

If you wish to proceed on the basis of option 3, and the request to amend is made after the application has been accepted, or if the new or additional grounds were not specified in the Notice which was given to the Tenant, the request will not be considered until the application has been served on the Tenant and they have had the opportunity to give their views on the application and any proposed amendment to it. AMENDMENT OF THE APPLICATION AS DETAILED IN OPTION 3 IS AT THE DISCRETION OF THE TRIBUNAL AND MAY BE REFUSED. Please reply to this office with the necessary information by 20 December 2022.

3. The Applicant's representative has not responded.
4. 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"***.
5. "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".
6. 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. 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.
7. It is open to 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.

**Lesley Ward**

Lesley Anne Ward

Legal Member