



**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 Miss Ah Na Huang of Aasrod Properties in terms of rule 111 of the Rules.

**Case reference FTS/HPC/CV/22/3315**

At Glasgow on the 23 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 Miss Ah Na Huang of Aasrod Properties in terms of rule 111 for civil proceedings arising out of a private residential tenancy agreement for 2/1 29 Birgidale Road, Castlemilk, G45 9LZ, ‘the property’. The application was made on her behalf by Mr Sunny Bhopal of TCF Properties.
2. The landlord and owner of the property is Aasrod Proprieties. Mr Bhopal lodged a letter dated 5 August 2022 from Ms Huang authorising him to act on her behalf in eviction proceedings. The letter made no mention of Aasrod Properties.
3. The inhouse convenor reviewed this application and a separate eviction application and the tribunal wrote to the applicant’s representative on 11 October 2022 seeking further information as follows:

(1)Your submissions on the validity of the Notice to Leave and whether the ground for eviction was established when the notice was served. It is noted that in part 3 of the Notice to Leave it is stated “Tenant is now 3 months in arrears. £625 was due on 09 June, 09 July and 09 August 2022 and the tenant has made no effort to pay the arrears”. However the Notice to Leave is dated 9 August 2022 and appears to have been sent to the tenant by email at 06:43am.

(2). Authorisation from the landlord, authorising TCF Property Management. It is noted that the letter of authorisation provided is from Miss An Na Huang, who is not the landlord or the proprietor.

(3). Please provide a clear rent statement showing rent due, rent paid and the running balance. It is noted from the ledger provided that there is reference to a holding deposit of £625. Please advise whether this is included in the rent statement and if so, please advise on what basis that has been included. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this request within 14 days of the date of the letter.

4. In addition the tribunal wrote to the applicant's representative on 11 October 2022 as follows:

Your application has been considered by a legal member of the Tribunal who has requested the following information:

(1) Please provide a clear rent statement showing rent due, rent paid and the running balance. It is noted from the ledger provided that there is reference to a holding deposit of £625. Please advise whether this is included in the rent statement and if so, please advise on what basis that has been included. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this request within 14 days of the date of this letter. If you fail to respond to this letter the tribunal may reject your application.

5. The applicant's representative responded on 11 October 2022 by providing an extract from Companies House confirming that Ms Huang is a director of Aasrod Properties and a rent statement. The tribunal sent a further request for information on 11 November 2022 as follows:

You were also asked to provide a letter of authority from the landlord. The landlord in this case is a limited company. You have produced a letter from an individual which makes no mention of her acting in any manner as a director of the limited company which is the landlord. Please provide appropriate authorisation from the limited company.

6. The applicant's representative withdrew the eviction application but no substantive reply was received to the above noted letter. The in-house convener reviewed the applications again and a further letter was sent on 19 December 2022 as follows:

You were also asked to provide a letter of authority from the landlord. The landlord applicant in this case is a limited company. That request also applies to this application. You have previously produced a letter from an individual which makes no mention of her acting in any manner as a director of the limited company which is the landlord. Please provide appropriate authorisation from the limited company authorising you to act as their agent in this payment application. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this request within two weeks of the date of the letter. If you fail to respond to this letter then the tribunal may reject your application. Please reply to this office with the necessary information by 2 January 2023. If we do not hear from you within this time, the President may decide to reject the application.

7. No response has been received.

- 8.** 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”***.
- 9.** “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”.
- 10.** 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 two detailed requests being sent by the tribunal and a reminder. As things stand the applicant’s representative has not demonstrated that he is instructed in this matter by the landlord and owner of the property. 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’s representative has failed to cooperate with the tribunal in the execution of its duties.
- 11.** 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.

Lesley Anne Ward

Legal Member