



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 Ms Emily Holtham or Farrand in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/19/2435

At Glasgow on the 17 September 2019, 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 on behalf of Ms Madeline Emily Holtham or Farrand, the co- owner of the property at Flat 3/3, 27 Elizabeth Street Glasgow G51 1SH, ‘the property’, for recovery of possession of the property in terms of Rule 65. The application was made on the applicant’s behalf by Mr Christopher Paul Sheridan of Sheridan’s Solicitors on 5 August 2019.
2. The application was accompanied by the following:-
 1. Tenancy Agreement dated 14 November 2012.
 2. AT6 dated 4 July 2019.
 3. S33 notice dated 25 October 2013.
 4. AT5 dated 13 November 2012.
 5. Sheriff Officer’s execution of AT6 dated 4 July 2019.
 6. S11 notice
 7. Rent statement.
3. The tribunal wrote to the applicant’s representative on 15 August 2019 as follows.

Before a decision can be made we require you to provide the following:

1. *There is only one respondent in the application form, however, we note that there is a reference to another tenant in the paper part, the lease agreement and the notices provided. Please advise if this application is being made against Mr Wasri only or against Miss Ilyas (or Alaana), if it is against both tenants please amend your application to confirm that there is a second respondent and provide her full name and address.*
2. *Given that termination is sought under section 18 of the Housing (Scotland) Act 1988, a valid notice to quit requires to have been served to end the contractual tenancy, please provide a copy of the notice to quit served on the tenants together with evidence of service.*
3. *We note that the AT6 provided by you refers to grounds 8, 11 and 12 only, yet the application refers to two further grounds (14 and 16), please confirm if you wish to amend the application to remove reference to these two additional grounds, or provide an AT6 giving notice that proceedings are also raised under these grounds and supply evidence of service of that notice and evidence of the matters pertaining to these grounds.*
4. *We note that the postcode listed for the property as set out in the title deeds is in fact G51 1SP and not G51 1SH, please amend this postcode in relation to the address of the property.*

- *Please reply to this office with the necessary information by 29 August 2019. If we do not hear from you within this time the President may decide to reject the application.*

4. No reply has been received to date.
5. There are serious problems with this application that the applicant's representative has not resolved. They have failed to provide the notice to quit and proof of service on both tenants. The lease provided does not comply with the terms of s18(6) of the Housing (Scotland) Act 1988. Presumably the applicant will be seeking to establish that the contractual tenancy has come to an end and a statutory assured tenancy is now in existence. The notice to quit is therefore an essential part of the tribunal requirements in terms of rule 65.
6. There are also outstanding matters regarding the AT6 which have not been resolved as noted above.
7. The applicant's representatives have failed to reply to correspondence from the tribunal within the time scale given. A further 19 days have elapsed and they have not responded.
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 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 that aspect of the application as it does not meet the essential requirements of rule 65.

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