



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 Mrs Eileen Aydinlar in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/19/2058

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 Mrs Eileen Aydinlar, the owner of the property at 20 Young Avenue Troon, KA10 6SJ, 'the property', for recovery of possession of the property in terms of Rule 65. The application was made on the applicant by Miss Nicole Carr Property Matters Online on 3 July 2019.
2. The application was accompanied by the following:-
 1. AT6 dated 13 June 2019.
 2. Notice to quit dated 13 June 2019.
 3. Rent statement.
 4. S11 notice regarding a Scottish Secure Tenancy.
 5. S33 notice dated 13 June 2019.
3. The tribunal wrote to the applicant's representative on 4 July 2019 requesting a copy of the tenancy agreement which was provided on 8 July 20189 along with the AT5.
4. The tribunal sent a further letter on 22 July 2019 as follows:

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

- *Please provide information and evidence of how and when the Notice to Quit and AT6 were given to the tenant.*

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- *The Notice to Quit appears to be invalid as the date specified does not tie in with an ish or end date of the tenancy and (assuming it was given to the tenant after 13 June 2019) it does not give the required period of notice. Please provide a valid notice to quit or confirm if you wish to proceed in terms of Section 18(6) of the Housing (Scotland) Act 1988.*
- *The AT6 notice lodged with the application is not in the prescribed format. Please provide a valid AT6.*

5. The applicant responded by email dated 5 August 2019 as follows:

I can confirm the notice to quit was served by recorded deliver and also hand delivered on the 13th June 2019. The AT6 is a template that we have always used, can you advise what format this should be in?

6. A further AT6 dated 13 June 2019 was lodged.

7. The tribunal sent the following letter to the applicant's representative on 19th August 2019 as follows:

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

- *You are required to provide evidence of service of the AT6, if it was served by recorded delivery then please supply copy of the RD receipt and the track and trace certificate.*
- *We note you have supplied a second AT6 Notice. Was this notice also served on the tenant in the date stated in the notice? Please advise which notice it was that was served on the tenant, the one originally lodged with the application or both? Please advise which notice or notices do you intend to rely on in relation to this application?*
- *The AT6 Notices both refer to grounds 11, 12 and 13; however your application seeks recovery under ground 8 and 12; in order to seek recovery under ground 8 you need to have served an AT6 which refers to ground 8. Please clarify therefore which ground or grounds your application is made under, and if it is grounds 11, 12 and 13 please amend your application to show this. If it is ground 8 please submit a copy of the AT6 referring to ground 8 and evidence of service.*
- *Further if you are seeking recovery under ground 13 please provide evidence of the breach you consider occurred under this ground, please also explain what notice you have given the tenant of this breach, ie what are the details of the breach.*
- *Please note that the section 11 notice refers to the wrong proceedings, please reserve it and forward a copy of it and evidence of service, to the tribunal.*
- *The title deeds for the property show that there are two owners of the property, Mr Aydinlar and Eileen Aydinlar, can you please provide written confirmation from the other owner that he was aware of and consented to the lease being granted: that he consents to these proceedings being brought: and that he consents to you acting as representative in this matter: alternatively he may wish to be a joint applicant in which case please amend the application to make him a joint applicant.*
- *Please provide written authority from both owners that you are instructed to represent them in this matter.*
- *Please reply to this office with the necessary information by 2 September 2019. If we do not hear from you within this time the President may decide to reject the application.*

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8. No reply has been received to date.
9. There are serious problems with this application that the applicant's representative has not resolved. They have failed to reply to correspondence from the tribunal within the time scale given. A further 15 days have elapsed and they have not responded.
10. It is not even clear to the tribunal that the applicant's representative has authority to act on her behalf on this matter. Further, even if Ms Carr has authority to act, no proof of service of the AT6 has been produced and it is not clear which of the 2 AT6's produced was served and which grounds are being relied upon. The s11 notice is not in the correct form. The basic requirements of rule 65 have not been met with this application and even if they were met, no proof of service of the AT6 has been produced and it appears that the AT6 is defective.
11. 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"***.
12. "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".
13. 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 Ward

Lesley Anne Ward

Legal Member