



**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 Joseph Bailie and William Bailie, in terms of rule 69 of the Rules.

**Case reference FTS/HPC/PR/23/0151**

At Glasgow on the 12 September 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 Joseph Bailie and William Bailie in terms of rule 69 of the rules for damages for unlawful eviction from the property at 2 Craibstone Cottages Deskford Cullen (‘the property’). The Application was made on 16 January 2023.
2. The Application was originally made by William Bailie alone. The inhouse convenor reviewed the application and the Tribunal wrote to the Applicant on 7 February 2023 seeking further information as follows:
  - (1) You state that the tenancy was in the name of your mother and that she was evicted. The Application ought to be made in her name. Please submit an amended Application
  - (2) As your Application relates to an assured tenancy it is regulated by sections 36 -37 of the Housing (Scotland) Act 1988. The measure of damages is specified in section 37 (1). Please provide the valuation required to satisfy section 37(1). Please reply to this office with the necessary information by 21 February 2023. If we do not hear from you within this time, the President may decide to reject the Application.
3. The Tribunal received an email from Victoria Gordon of Moray CAB on 15 February 2023 explaining that the Applicant’s mother was deceased and that the Applicant and his brother occupied the property when the eviction was granted by the sheriff.

4. The in-house convenor reviewed the Application and the further information received and a further detailed letter was sent on 20 March 2023 as follows:
- (1) As the Application relates to an assured tenancy it is regulated by sections 36 -37 of the Housing (Scotland) Act 1988. The measure of damages is specified in section 37 (1). Please provide the valuation required to satisfy section 37(1).
  - (2) The Tribunal notes that the eviction is asserted to have taken place in 2016. Please provide your comments as to whether or not the Application is time barred. Please reply to this office with the necessary information by 3 April 2023. If we do not hear from you within this time, the President may decide to reject the application.
5. Ms Gordon responded on 3 April 2023 stating the Tribunal requests were beyond the competence of the CAB and that the matter had been passed to the Civil Legal Advice Office. Nothing further was heard and the Tribunal sent a letter on 4 May 2023 as follows:
- (1) If the “unlawful eviction” took place in 2016, please clarify why the Application can and should be considered now.
  - (2) The name of the landlord on the tenancy agreement is different from the Respondents. Please clarify.
  - (3) It appears from the Application that the eviction took place following court action. Please clarify why this can be considered to be “unlawful”
  - (4) As before, please provide evidence regarding the amount of damages and how these are calculated.
  - (5) Full details of the basis for the Application should be provided.

Please reply to this office with the necessary information by 18 May 2023. If we do not hear from you within this time, the President may decide to reject the Application.

6. Ms Gordon responded on 16 May 2023 by seeking to add Mr Joseph Bailie as an Applicant. She also submitted that the Applicants had been unable to obtain advice regarding the Application until recently.
7. The Tribunal sent a further detailed request for information on 15 June 2023 as follows:

It appears from the submission that the Applicant is seeking to challenge the decision of a Sheriff in 2016 to grant an eviction order. The Tribunal does not have jurisdiction to review a decision of the Sheriff nor is there a right of appeal to the Tribunal from the Sheriff Court.

Rule 69 and Section 36(3) apply where there has been an unlawful eviction. An eviction carried out in terms of a decree granted by the Sheriff is unlikely to be unlawful. Furthermore, the Applicant has not complied with the requirements of Rule 69 and the events which are the subject of the application pre-date the transfer of jurisdiction to the Tribunal. Based on the information provided, it does not appear that the application can be accepted. Please advise if you wish to withdraw the application or provide further information or authority for the matter to proceed.

Please reply to this office with the necessary information by 29 June 2023. If we do not hear from you within this time, the President may decide to reject the application

8. No reply was received. A reminder was sent on 8 August 2023. The Application has not been withdrawn and no reply has been received.
9. 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”***. “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 this Application to be futile with no prospect of success. The Applicants appear to be challenging and eviction made in the sheriff court in 2016. The Tribunal does not have jurisdiction to challenge or review a decision of the sheriff and even if it did, the Applicants were not parties to the tenancy agreement.
11. Rule 8(c) of the rules allows the Chamber President to reject an Application if they have good reason to consider that it would not be appropriate to accept it. As things stand the Applicants’ representative have not responded to a reasonable request from the Tribunal for further information. I have good reason in terms of Rule 8(c) of the rules to consider that it would not be appropriate to accept this Application as the Applicants’ representative has also failed to cooperate with the Tribunal in the execution of its duties.

**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