



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 Lynne Cherry in terms of rule 70 of the Rules.

Case reference FTS/HPC/CV/23/0141

At Glasgow on the 13 November 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 Ms Lynne Cherry in terms of rule 70 for civil proceedings arising out of an assured tenancy agreement for 3/1 811 Dalmarnock Road Glasgow G40 4QB, ‘the property’. The application was made on behalf of the Applicant by 1-2-Let LTD on 13 January 2023.
2. There has been ongoing correspondence between the Tribunal and the Applicant’s representative since 7 February 2023 as the application was incomplete. The inhouse convenor reviewed the application and the Tribunal wrote to the Applicant’s representative on 24 April 2023 seeking further information as follows:

Thank you for your recent response. We note that your revised rent statement shows the rent arrears have decreased because you have received and applied the deposit to the arrears, this implies the tenancy may be at an end and the tenant has left.

Please confirm if that is the case or if the tenant is still living in the Property which is the address you have given for him. If he has left please provide a home address for him as we require that in order to serve the application and papers on him. If you are not aware of his forwarding address you may apply to serve the application by service by advertisement but you will require to show evidence that you have tried using sheriff officers or tracing agents to trace him and this has failed. You will find an application to serve by advertisement on our website.

Please confirm the status of the tenancy within 7 days and provide a forwarding address if necessary. Please reply to this office with the necessary information by 1 May 2023. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

3. The Applicant's representative contacted the Tribunal the same day to advise that the Respondent had vacated the property and had not left a forwarding address. No other information was provided in response to the tribunal's detailed letter.

4. The Tribunal sent a further letter on 24 May 2023 as follows:

Please provide an address for the Respondent. The application cannot proceed without one or alternatively complete an application for service by advertisement. Applications may be obtained from the Tribunal website and must be accompanied by evidence of attempts to trace the Respondent such as a trace report from sheriff officers. Please provide the information requested within 14 days failing which the application may be rejected. Please reply to this office with the necessary information by 7 June 2023. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

5. The applicant's representative wrote on 24 May 2023 stating that they did not have a residential address for the respondent and giving his email address.

6. The Tribunal sent a further request for information on 21 August 2023 as follows:

In your email of 24 May 2023, you advised that you do not hold an address for the Respondent. The Tribunal will have to intimate the application to the Respondent in due course if your application is accepted. You can apply for service by advertisement. Any application must be accompanied by details of the efforts made to trace the Respondent, such as a sheriff officer trace report. Please respond within 14 days. Upon receipt of the above information, a 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. If you fail to provide the necessary information the tribunal may reject your application. Please reply to this office with the necessary information by 4 September 2023. If you require any further information, please contact us, quoting your reference number.

7. No reply was received. A reminder was sent on 10 October 2023. There was no reply.
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 detailed requests being sent by the Tribunal and several reminders. 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.

Legal Member