



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 Mr Stephen Armstrong in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/23/1733

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 Mr Stephen Armstrong for eviction in terms of rule 109 of the Rules. The application was made on his behalf on 26 May 2023 by Mr Iain Campbell of Uomega Lettings.
2. The in-house convener reviewed the application and the Tribunal wrote to the Applicant’s representative on 29 June 2023 as follows:
 - The notice to leave is dated 22/05/2023. The e-mail to the tenant which is said to attach the notice is dated 20th December 2022. Please provide a copy of the notice which was sent to the tenant.
 - The e-mail to the tenant with the notice is to a different e-mail address to that shown in the tenancy agreement. Please confirm if the tenant changed e-mail address.
 - The notice to leave relies upon ground 1. However, the application form relies on ground 10. Please confirm the position regarding which ground you seek to rely upon. Please reply to this office with the necessary information by 13 July 2023. If we do not hear from you within this time, the President may decide to reject the application.
3. The Applicant responded on 10 July 2023 as follows:

The notice to leave is dated 22/05/2023. The e-mail to the tenant which is said to attach the notice is dated 20th December 2022. Please provide a copy of the notice which was sent to the tenant.

Please see the original notice attached

- The e-mail to the tenant with the notice is to a different e-mail address to that shown in the tenancy agreement. Please confirm if the tenant changed e-mail address. **The tenant updated their email address to tywldng@yahoo.com**
- The notice to leave relies upon ground 1. However, the application form relies on ground 10. Please confirm the position regarding which ground you seek to rely upon. **Apologies for the confusion, there was an error in the application where we sited grounds from the 1998 Act instead of the correct one. The notice to leave should rely upon ground 1, The Landlord intends to sell the Let Property.**

4. The in-house convenor reviewed the application and the Tribunal wrote to the Applicant on 10 August 2023 seeking further information as follows:

A Legal Member of the Tribunal with delegated powers of the President has considered your Application. Please provide the following- • An amended application form which specifies the correct ground. • Evidence in support of the eviction ground such as a copy of the contract with the selling agent. Please respond within 14 days or your application may be rejected Please reply to this office with the necessary information by 22 August 2023.

5. No reply was received. The Tribunal sent a reminder on 5 October 2023. No reply has been received.
6. 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”**.
7. “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”.
8. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The application grounds do not tie in with the notice to leave and there is no evidence of the eviction ground.
9. Rule 8(c) requires the Chamber President to reject an application if they have good reason to believe it would not be appropriate to accept it. I have good reason not to accept this application as the applicant’s representative has 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.

Legal Member