

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Case reference FTS/HPC/EV/23/2437

Parties

Mr Robert Comrie, Mrs Tracey Comrie (Applicant)
Mrs Nicole Comrie, Mrs Christie Comrie (Respondent)

1 Ferguson Park, Rattray, Blairgowrie, Perthshire, PH10 7AT (House)

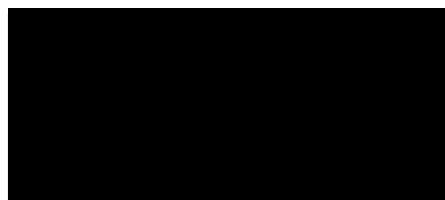
1. By application received on 20 July 2023 the Tribunal received an application for an eviction order from the Applicant. The application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").
2. The application was incomplete. On 24 July 2023 the Tribunal wrote to the Applicant requesting the following:-
 - Evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant;
 - A copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
 - Evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority.
3. The Tribunal received no response. On 24 August 2023 the Tribunal wrote again to the Applicant. In addition to the information sought in its letter of 24 July the Tribunal further requested evidence of landlord registration, a rent statement and clarification of the eviction ground upon which the application was to proceed.
4. Again, the Tribunal received no response. On 12th October 2023 the Tribunal wrote to the Applicant requesting the information sought in previous correspondence and advising that in the absence of same the application may be rejected by the Chamber President. There was no response from the Applicant.
5. 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".

6. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form and in the absence of any further information from the Applicant. There is no evidence that a Notice to Leave has been served on the Respondents, which is a fundamental statutory requirement, and no proof that the Applicant has notified the local authority of the intention to raise proceedings. Furthermore it is not clear from the terms of the application what eviction ground the Applicant is relying upon and on that basis the application cannot provide the Respondents with fair notice of the ground upon which an eviction order is sought. Accordingly I do not believe the Tribunal can competently entertain the application.
7. It is open to the Applicant to make a new Application if they are in a position to satisfy the Tribunal regarding the outstanding information.

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.



Ruth O'Hare, Legal Member

8 December 2023