



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 Douglas Millar terms of rule 65 of the Rules.

Case reference FTS/HPC/EV/23/3594

At Glasgow on the 11 December 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 Douglas Millar for eviction. The application was made on his behalf by Mr Lee Simpson of Saltouns Property Lettings, ostensibly in terms of rule 65 of the Rules, however no AT6 was lodged and given a section 33 notice was lodged, rule 65 may have been used in error.
2. The in-house convenor reviewed the Application and the Tribunal wrote to the applicant’s representative on 2 November 2023 seeking further information as follows:

In the notice to quit which has been provided, it is indicated that the tenant requires to quit the premises by “5 October 2023”. The initial tenancy bears to run from 5 April 2013 to 31 October 2013 and monthly thereafter. Does the notice to quit specify a removal date which is an “ish” or end date of the tenancy? If not on what basis is the purported notice effective and valid in law?

Please note the terms of the attached letter relating to the potential impact on your application of the Cost of Living (Tenant Protection) (Scotland) Act 2022

Upon receipt of the above information, a final 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. Please respond to this letter within the next two weeks.

You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Please reply to this office with the necessary information by 16 November 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. No response has been received.
4. 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”***.
5. “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. The notice to quit is invalid as it does not tie in with the ish date of 31 of the month. Stalker on Evictions at page 59 states:

It follows that if the date stated in the notice to quit is earlier than the ish, but without any indication of why the tenant is being asked to leave early, the notice is ineffective: the landlord cannot call on the tenant to leave before the tenant is contractually obliged to do so.
7. Given the notice to quit is invalid, the contract between the parties has not therefor being brought to an end and a rule 66 Application based on the expiry of the short assured tenancy agreement cannot succeed. There is no AT6 and without this an application in terms of rule 65 cannot succeed.
8. Rule 8(1) (c) provides that the Chamber President must reject an Application if they have good reason to believe it would not be appropriate to accept it. I consider I have good reason in this case as the notice to quit is invalid and the Applicants’ representative has failed to cooperate with the Tribunal in the execution of its duties.
9. It is open to the applicants to make a new application once they have served the proper notices.

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