

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/23/2760

Parties

Neil Dane (Applicant)
Empire Property (Applicant’s Representative)
Modinat Sanusi, Taofik Sanusi (Respondent)

26 Webster Groves, Wishaw, ML2 8XX (the Property)

Legal Member

Ruth O’Hare, with delegated powers from the Chamber President

Background

1. This 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 15th August 2023 the Tribunal wrote to the Applicant’s representative in the undernoted terms:-

“The following further information is required from you before your application can proceed to the Chamber President for consideration:

- *evidence showing that the eviction ground or grounds has been met.*
- *a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act.*
- *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.*
- *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.*

Please reply to this office with the necessary information by 22 August 2023, otherwise the application may be rejected.”

3. The Tribunal received no response. On 18th September 2023 the Tribunal wrote to the Applicant's representative in the following terms:-

"Before a decision can be made, we need you to provide us with the following:

We refer to our email of 15 August 2023 and note that we have not received a response:

1. Clarification of the Applicant's first name, as it differs from the owner and registered landlord of the property. If the landlord noted in the tenancy agreement is not the proprietor and registered landlord, please provide written evidence that the Applicant was authorised to enter into the tenancy agreement.

2. A mandate from the Applicant authorising you to act on their behalf in these proceedings.

3. Evidence which demonstrates that the ground of eviction has been established.

4. A copy of the Notice to Leave served on the tenants, together with evidence of service.

5. A copy of the section 11 notice served on the local authority, together with evidence of service.

Please reply to this office with the necessary information by 2 October 2023. If we do not hear from you within this time, the President may decide to reject the application."

4. Again, the Tribunal received no response. On 27 October 2023 the Tribunal emailed the Applicant's representative again in the following terms:-

"A Legal Member of the Tribunal with delegated powers of the President has considered your application and notes that you failed to respond to two requests for further information and documents. Please provide the information requested in the email of 18 September and also confirm the Applicant's address as a c/o address cannot be used.

Please respond within 7 days or it is likely that the application will be rejected. Please reply to this office with the necessary information by 3rd November 2023. If we do not hear from you within this time, the President may decide to reject the application."

5. On 1 November 2023 the Tribunal received an email from the Applicant's representative. The email stated *"Please see attached as requested"*. The attachments to the email consisted of the application form, a rent statement and email correspondence from the Applicant to the Applicant's representative. On 24 November 2023 the Tribunal wrote again to the Applicant's representative in the undernoted terms:-

“A Legal Member of the Tribunal with delegated powers of the President has considered your response and notes that it does not address the matters raised in the request for information or provide the documents stipulated. Please note that the application cannot be accepted until you have provided this. Please also provide an address for the Applicant as the c/o address cannot be provided.

You may wish to take legal advice before you respond.

Please reply to this office with the necessary information by 1 December 2023. If we do not hear from you within this time, the President may decide to reject the application.”

There was no further response from the Applicant’s representative.

Decision

6. The circumstances in which an application is to be rejected are governed by Rule 8 of the Chamber Procedural Rules. That Rule provides:-

"Rejection of application

8.-(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

7. After consideration of the application and the lack of any further correspondence from the Applicant or her representative, the Legal Member considers that the application should be rejected on the basis that it would not

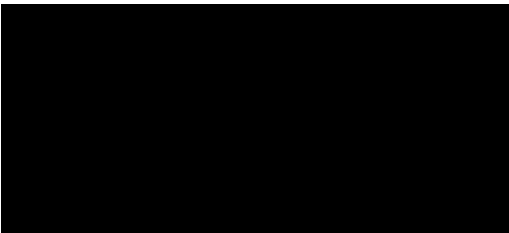
be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

Reasons for Decision

8. The Applicant was given the opportunity to provide further information by way of the requests from the Tribunal on 15 August 2023, 18 September 2023, 27 October 2023 and 24 November 2023. As at the date of this decision neither the Applicants nor their representative have provided the information requested. This additional information requested was necessary to allow the application to proceed. The Applicant's representative was warned on four occasions that failure to respond may lead to the application being rejected. In the absence of any response from the Applicants it would not be appropriate to accept the application and it should therefore be rejected.

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

17 January 2024