

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/23/3380

Parties

Alexander Moore, Karen Moore (Applicant)
Lewis Moore (Respondent)

The Croft, Cowsrieve, Peterhead, AB42 3JS (the Property)

Legal Member

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

Background

1. This application was made under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 26th October 2023 the Tribunal wrote to the Applicant in the following terms:-

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

1. It is stated in the Notice to Leave that the Respondent has been living in the property since 1st November 2016. If that is the case, it cannot be a private residential tenancy and you have not served the correct notices to bring the tenancy to an end. The application cannot be made under Rule 109, as that is only for private residential tenancies, which were created after 1st December 2017. If it is an assured tenancy, the correct rule would be Rule 65, however, you should be aware that there is no ground of intention to sell in terms of the Housing (Scotland) Act 1988, which is the correct legislation for an assured tenancy. If the application has been made under the wrong rule, you should confirm that you are withdrawing the application. You would be advised to take suitable legal or housing advice on your options for ending an assured tenancy, as the paperwork required can be complicated, particularly in the absence of a tenancy agreement.

You should be aware of the following for future applications:

2. We would expect to see evidence of receipt of any statutory notices served on the Respondent such as track and trace information from Royal Mail.

3. A Rule 109 application requires evidence to support the ground of eviction. Ground 1 requires evidence of intention to sell such as a home report or terms of business letter with a selling agent.

4. We have been unable to find evidence of landlord registration.

5. We await a copy of the Title Deed, which may raise other issues.

6. The Notice to Leave is undated. If making any further application, you should ensure that all copy notices are completed correctly.

7. Some current applications are affected by The Cost of Living (Protection for Tenants) (Scotland) Act 2022. Please see the information in the attached letter.'

Please reply to this office with the necessary information by 9 November 2023. If we do not hear from you within this time, the President may decide to reject the application."

3. The Tribunal received no response. On 30 November 2023 the Tribunal emailed the Applicant again in the following terms:-

"Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member responds as follows:

1. Please provide the information requested in the Tribunal's email to you of 26 October 2023.

Please provide the information requested within 14 days failing which the application may be rejected."

4. No further response was received from the Applicant.

Decision

5. 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."

6. After consideration of the application and the lack of any further correspondence from the Applicant, 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

7. The Applicants were given the opportunity to provide further information by way of the requests from the Tribunal on 26th October 2023 and 30 November 2023. As at the date of this decision there has been no further response from the Applicant. This additional information requested was necessary to allow the application to proceed. The Applicant was warned on two occasions that failure to respond may lead to the application being rejected. In the absence of any response from the Applicant 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

16 January 2024