

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/23/3561

Parties

Charlotte Brown (Applicant)
David Brown (Applicant’s Representative)
Chris Guasp (Respondent)

Property

Flat 3/2, 11 Laurel Place, Glasgow, G11 7RE (House)

Legal Member

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

Background

1. By application received on 9 October 2023 the Tribunal received an application for an eviction order from the Applicant’s representative. The application was made under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The Applicant produced a tenancy agreement which commenced on 21 October 2014. The tenancy was therefore an assured tenancy under section 12 of the Housing (Scotland) Act 1988. The Applicant also produced a Notice to Leave.
3. On 6 November 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:

• Please clarify the ground of eviction relied upon. Please note that ground 8 of schedule 5 of the Housing (Scotland) Act 1988 has been repealed and is therefore no longer applicable.

• You have provided a copy Notice to Leave (“NTL”) which is in terms of section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. However, this is not applicable to an assured tenancy under the Housing (Scotland) Act 1988. If you have not served the correct notices, please confirm that you wish to withdraw the present application to allow you to do so.

• *You have provided a copy of an email to the local authority, but you have not provided a copy of the section 11 notice. That is required before any application can proceed.*

You may wish to seek advice from a solicitor or housing advisory service to enable you to deal with the points above. Please respond within 14 days. Upon receipt of the above information, a 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. If you fail to provide the necessary information the tribunal may reject your application.”

4. On 8 November 2023 the Tribunal received a response from the Applicant’s representative. With regard to the Notice to Leave the Applicant’s representative advised that he had followed the guidance on the government website and requested a link to the correct form. On 30 November 2023 the Tribunal responded to advise that, as an independent body, it could not assist the Applicant by providing links to forms or commenting on government advice. The Applicant was encouraged to seek legal advice and to confirm if they wished to withdraw the application. No further response was received from the Applicant, nor her representative.

Decision

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 due to the Applicant having served the wrong statutory notice. The tenancy is an assured tenancy under the Housing (Scotland) Act 1988. A Notice to Leave is applicable to private residential tenancies which are governed by the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal cannot entertain the application without a valid statutory notice. The application is therefore futile in its current form and falls to be rejected as frivolous.

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