



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/EV/23/2719

Re: 13 Iona Place, Hallglen, Falkirk, FK1 2PU (Property)

Parties

Mr Derek Fraser (Respondent)

Mrs Margaret Sneddon (Applicant's Representative)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be rejected on the basis that it would not be appropriate to accept it within the meaning of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 66 on 10 August 2023.
2. The application was considered by the Tribunal and further information was requested by email of 1 June 2023 as follows:

"Before a decision can be made, we need you to provide us with the following: • The Notice to Leave is dated 5 October 2022 and states that "an application will not be submitted to the Tribunal for an eviction order before 05 November 2022. In terms of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016, a landlord may not make an application for an eviction order using a copy of a notice to leave more than 6 months after the day on which the notice period expired. Please confirm that you wish to withdraw the present application to enable you to serve a new notice to leave on the tenant. Please note that for any future application, you should consider the following before

submitting the application:- 1. There is a joint proprietor. You should provide written evidence that that joint proprietor authorised you to enter into the tenancy agreement and consents to you raising proceedings. 2. If you appoint a representative to act on your behalf, you should provide written evidence showing that you authorise the representative to act on your behalf. 3. You have ticked the box on page one of the form E indicating that the application is made in terms of Rule 66. That rule relates to short assured tenancies. The Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk tenancy agreement that you have produced in a private residential tenancy to which Rule 109 applies. 4. You have stated in the application a reason for eviction which is not mentioned on the notice to leave. You may need to provide submissions explaining why the Tribunal should give permission for you to proceed on the basis of a ground of eviction not stated in the notice to leave. 5. Any application should be accompanied by a section 11 notice served on the local authority together with evidence of service. Please confirm that you wish to withdraw the present application within 14 days. Upon receipt of the above information, a decision can then be taken about the application. If you fail to provide the necessary information the tribunal may reject your application.”

No response was received. The Tribunal sent a reminder email on 15 August 2023 in the following terms:

“It is noted that you have failed to respond to our request dated 10 July 2023 seeking further information regarding your applications Please respond to this letter within the next two weeks failing which the tribunal is likely to have no option but to reject the applications on the basis of your failure to provide the necessary information requested by the tribunal. 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. You may wish to obtain independent legal advice on the matters contained in this letter. Please reply to this office with the necessary information by 29 August 2023. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received. The Tribunal wrote again on 6 November 2023 as follows:

“Before a decision can be made, we need you to provide us with the following: We refer to our letter of 14 September 2023 and note that we have not received a response. Please respond within 14 days, otherwise your application is likely to be rejected. Please reply to this office with the necessary information by 20 November 2023.”

No response was received.

Reasons for Decision

3. The Tribunal considered the application in terms of 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;·*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

(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."

4. Rule 66 of the Tribunal Procedure Rules provides:

Application for order for possession upon termination of a short assured tenancy

66. Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord; and

(iii)the name and address of the tenant;

(b)be accompanied by a copy of—

(i)the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii)the notice by landlord that the tenancy is a short assured tenancy; and

(iii)the notice given to the tenant under section 33(1)(d) of the 1988 Act; and

(c)be signed and dated by the landlord or a representative of the landlord.

5. The application seeks to proceed under Rule 66. The Applicant has failed to provide necessary information as detailed in paragraph 2 above. The Tribunal cannot grant an order under Rule 66 without the information requested.

6. The Tribunal consider that the failure to provide the required information constitutes good reason why the application should not be accepted. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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 first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Legal Member/Chair

20 December 2023

Date