



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 Alan James Irvine in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/4329

At Glasgow on the 5 February 2024, 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) of the Rules

1. This is an application by Mr Alan James Irvine for eviction in terms of rule 109 of the Rules. The application was dated 28 November 2023 and was sent to the tribunal by email by his representative Mr David Gray Senior Accredited Paralegal of Gilson Gray LLP on 4 December 2023.
2. The in-house convenor reviewed the application and the tribunal wrote to the applicant’s representative on 5 January 2023 seeking further information as follows:

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

1. Please provide a copy of the Notice to Leave and evidence of service. Whilst there is reference to the Notice in your application it does not appear to be enclosed with the paperwork submitted. Please reply to this office with the necessary information by 19 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. The applicant's representative replied on 5 January 2024. He sent the notice to leave and proof of service. The notice to leave is dated 4 May 2023 and was served on the respondents by sheriff officer on that date. The notice to leave expires on 3 June 2023.
4. Section 55 of the Private Housing (Tenancies)(Scotland) Act 2016 provides:

55 Restriction on applying 6 months after the notice period expires

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2) In subsection (1), "the relevant period" has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

5. This provision means that this application should have been made with the Tribunal no later than 6 months after 3 June 2023. It should therefore have been made by 3 December 2023. It was not made until 4 December 2023.

6. Stalker on Evictions at page 318 states:

It may be best to illustrate the application of this rule with an example. L serves a notice to leave on T by email sent on 11 May 2022. This is taken to have been received by T on 13 May. The notice specifies ground 12 as the ground on which the eviction will be sought. Therefore, the relevant period notice is twenty- eight days, and expires on 10 December. Therefore the application must be made (ie received by the tribunal), no later than that date... the tribunal has no discretionary power to allow an application in breach of section 55.

7. Stalker goes on to say in the footnote to page 319:

If, in this example the application was received by the tribunal on 10 December but was not lodged in the prescribed manner, it would not be 'made' in terms of rule 5, until the 'mandatory requirements for lodgement have been 'met'.

8. This means that even if the application had been timeous on 4 December 2023, given the notice to leave and proof of service were not attached, it was still time barred as these documents were not provided until 8 January 2024.
9. 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"***.

10. "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".

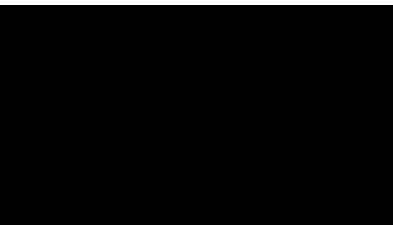
11. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The application has not been made within 6 months of the expiry of the notice to leave and the tribunal cannot therefor entertain the application in terms of section 52 of the Act.

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.



Legal Member