



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/23/2907

Parties

**Elizabeth Manshour, Mehdi Manshour (Applicant)
Gentjana Cipi, Marsel Poda (Respondent)**

14/1, Hawkhill Close, Edinburgh, EH7 6AL (House)

1. By application received on 24 August 2023 the Tribunal received an application for an eviction order from the Applicant. The application was made under Rule 66 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 6 October 2023 the Tribunal wrote to the Applicant in the following terms:-

“The application has been made in terms of Rule 66 – termination of a short assured tenancy. However, the agreement lodged with the application states that it started in 2018. In terms of the Private Housing Tenancies (Scotland) Act 2016, no new assured or short assured tenancies can be created after 1 December 2017. It therefore appears that the tenancy is a private residential tenancy. If so, you must provide

1. *A copy of a valid Notice to leave which has been given to the tenants, with evidence of service.*
2. *A copy of the section 11 notice sent to the local authority.*
3. *An amended application form which refers to valid grounds under the 2016 Act. Please note that a landlord cannot use ground 2. This ground can only be used by a lender after they have recovered possession of the property by way of court order.*
4. *Evidence in support of the eviction grounds.*

If you have not served a notice to leave you should withdraw the application and re-submit it once you have done so. You may wish to take legal advice before you respond.

Please reply to this office with the necessary information by 20 October 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 16 November 2023 the Tribunal wrote again to the Applicant requesting a response to the email of 6 October 2023 by 23rd November 2023. On that same date the Applicant responded to request an extension in order to provide the information sought. The Applicant further mentioned that the property was managed by a factoring company and asked whether this was relevant to determining the type of tenancy. The Tribunal responded by email dated 19 December 2023 in the following terms:-

“Thank you for your recent response asking for further time to respond to our original letter of 6th October. The Tribunal is prepared to grant a further 21 days, in view of the upcoming holidays during which the Tribunal offices will be closed. The Tribunal however is an independent judicial body and cannot provide legal advice. We would recommend that you seek independent legal advice if you have not already done so.

With regard to the information outstanding we would remind you that if the tenancy started after December 2017 then it may be a private residential tenancy and you have made an application in terms of Rule 66 – termination of a short assured tenancy. The agreement lodged with the application states that it started in 2018 as does the AT5 form. In terms of the Private Housing Tenancies (Scotland) Act 2016, no new assured or short assured tenancies can be created after 1 December 2017.

Please confirm when the tenancy started and if it started in 2018 then it is likely that the tenancy is a private residential tenancy but the onus is on the applicant to advise what tenancy and what eviction ground they are relying on. If you submit it started after 2018 then you must provide :-

- 1. A copy of a valid Notice to leave which has been given to the tenants, with evidence of service.*
- 2. A copy of the section 11 notice sent to the local authority together with evidence of service of it.*
- 3. An amended application form which refers to Rule 109 and valid grounds under the 2016 Act. Please note that a landlord cannot use ground 2. This ground can only be used by a lender after they have recovered possession of the property by way of court order.*
- 4. Evidence in support of the eviction grounds which if the ground is that the landlord wishes to sell should be a letter of engagement from a solicitor or estate agent or a home report.*
- 5. If you believe the tenancy started prior to 2018 please provide evidence for this and please provide your submissions as to why this should be accepted.*

Please reply to this office with the necessary information by 9 January 2024. If we do not hear from you within this time, the President may decide to reject the application.”

4. The Applicant responded by email on 9th January 2024, setting out the background to the tenancy and detailing discussions held with the local authority. They did not however provide any argument as to why the tenancy

was not a private residential tenancy. The Applicant further advised that the Respondents had become uncooperative and aggressive which had led to the application before the Tribunal. The Applicant confirmed that all relevant information and documentation had been provided to the Tribunal. They did however provide additional documentation in the form of extract orders from the Sheriff Court and sales particulars for the property.

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 and in the absence of any further information from the Applicant. The Applicant has failed to provide any legal basis upon which the tenancy should not be considered a private residential tenancy. There is no evidence that a Notice to Leave has been served on the Respondents, which is a fundamental statutory requirement, and no proof that the Applicant has notified the local authority of the intention to raise proceedings. On that basis the application cannot comply with the requirements of the Private Housing (Tenancies) (Scotland) Act 2016 and therefore has no reasonable prospects of success.

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
5 February 2024