

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/23/2757

Parties

Andrew Nevay (Applicant)
Empire Property (Applicant’s Representative)
Brian McQuade (Respondent)

35 Northwood Drive, Newmains, ML2 9NY (the Property)

Legal Member

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

Background

1. This application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The application was incomplete. On 31st August 2023 the Tribunal wrote to the Applicant’s representative in the undernoted terms:-

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

- 1. Please amend the application to give the correct spelling of your client’s name. The correct spelling according to the title is Nevay.*
- 2. Please provide your mandate from the applicant authorising you to act on his behalf in this matter.*
- 3. Please amend the application to give the applicant’s address as a care of address is not sufficient.*
- 4. Please amend the application to remove the reference to ‘care of’ for you as representative as we can’t accept a care of address for you either.*
- 5. Please amend the application at part 5 to give the same eviction ground as the one referred to in the notice to leave and with reference to schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.*

6. *We enclose an explanatory letter in connection with the Cost of Living (Tenant Protection)(Scotland) Act 2022.*

7. *Please provide proof of service of the notice to leave.*

8. *Please provide evidence of compliance with the pre action requirements.*

9. *Please provide the s11 notice required in terms of section 56 of the Private Housing (Tenancies)(Scotland) Act 2016 and proof of service.*

Please reply to this office with the necessary information by 14 September 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 10th October 2023 the Tribunal wrote again to the Applicant’s representative requesting a response to the Tribunal’s letter of 31st August 2023. The Applicant’s representative was warned that, in the absence of a response, the application may be rejected by the President.

4. On 16 October 2023 the Tribunal received an email from the Applicant’s representative with a copy of the Notice to Leave, Form E application form and an email from the Applicant confirming he was content for the Applicant’s representative to act on his behalf.

5. On 9 November 2023 the Tribunal wrote to the Applicant’s representative in the following terms:-

“Thank you very much for your recent response, however we still require to see the following before we can accept your application.

1. *S11 notice to the local authority and a evidence of how it was served eg copy email or proof of posting.*

2. *In addition although not mandatory it would be helpful if you advised if you have sent any pre action requirement letter to the tenant prior to raising this action and if so if you could send a copy of these.*

Please reply to this office with the necessary information by 23 November 2023. If we do not hear from you within this time, the President may decide to reject the application.”

6. The Tribunal received no response. On 18 December 2023 the Tribunal wrote again to the Applicant’s representative in the following terms:-

“A Legal Member of the Tribunal with delegated powers of the President has considered your application and notes that you have failed to respond to a request for further information.

1. *Please provide a copy of the section 11 notice with evidence that it was sent to the Local Authority. The application cannot be accepted if you fail to do this.*

2. *If the Applicant has complied with the Rent Arrears Pre action Protocol, please provide evidence of this.*

3. *The rent statement is now out of date. Please provide an updated statement.*

Please reply to this office with the necessary information by 1 January 2024. If we do not hear from you within this time, the President may decide to reject the application."

7. The Tribunal received no further response from the Applicant's representative.

Decision

8. 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."

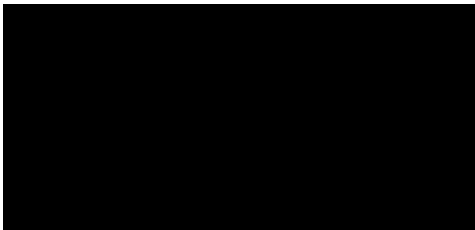
9. After consideration of the application and the lack of any further correspondence from the Applicant or their representative, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

Reasons for Decision

10. The Applicant was given the opportunity to provide further information by way of the requests from the Tribunal on 9th November 2023 and 18th December 2023. This followed two earlier requests for information which were not fully complied with. As at the date of this decision neither the Applicant nor their representative have provided the information requested. The additional information requested was necessary to allow the application to proceed. The Applicant's representative was warned 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

29 January 2024