



Decision with Statement of Reasons of H Forbes, 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/PR/24/0002, FTS/HPC/PR/24/0003, FTS/HPC/PR/24/0004, FTS/HPC/PR/24/0005 & FTS/HPC/PR/24/0006

Parties:

Ms Hoi Ki Lui ("the Applicant")

Mr Graeme Lindsay ("the Respondent")

Tribunal Member:

H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that the applications are frivolous in terms of Rule 8(1)(a) of the Procedural Rules, and it would not be appropriate to accept the applications in terms of Rule 8(1)(c).

Background

1. An application form was lodged by the Applicant on 3rd January 2023. The form stated that the application was made under:

Rule 47 (FTS/HPC/PR/24/0006)
Rule 67 (FTS/HPC/PR/24/0005)
Rule 69 (FTS/HPC/PR/24/0004)
Rule 78 (FTS/HPC/PR/24/0002)
Rule 110 (FTS/HPC/PR/24/0003).

2. The applications were considered by a Legal Member of the Tribunal and a request for further information was issued on 29th January 2024 as follows:

You have cited five rules in your application – Rules 47, 67, 69, 78 and 110.



Rule 47 relates to the landlord's duty to comply with the Repairing Standard in relation to the condition of the property and in terms of the provisions under sections 14, 15 and 17 of the Housing (Scotland) Act 2006. A landlord or a tenant can ask the Tribunal to exclude a tenancy from those provisions and the Tribunal may agree to this if both parties consent and it is reasonable to do so. It is not apparent from the terms of your application as to why this rule has been selected. Please clarify the basis upon which this rule has been included.

Rule 67 applies where the Tribunal has made an order for possession of a property let on an assured tenancy under specific grounds under the Housing (Scotland) Act 1988. In such cases the Tribunal can award the tenant the reasonable expenses likely to be incurred by the tenant in removing from the house. You indicate that the tenancy was entered into on or around September 2023, in which case it would not appear to be an assured tenancy under the Housing (Scotland) Act 1988. Furthermore, there is no evidence of a possession order having been granted by the Tribunal. Please clarify the basis upon which this rule has been included.

Rule 69 also applies to assured tenancies under the Housing (Scotland) Act 1988 and allows a tenant to seek damages for an unlawful eviction. Again please clarify the basis upon which this rule has been included as the tenancy does not appear from the information provided to be an assured tenancy.

Rule 78 applies where the Tribunal has made an order for possession of a property let on a regulated tenancy under the Rent (Scotland) Act 1984. On the basis that the tenancy was entered into on or around September 2023, it would not appear to be a regulated tenancy under the 1984 Act. Furthermore, there is no evidence of a possession order having been granted by the Tribunal. Please clarify the basis upon which this rule has been included.

Rule 110 allows a tenant to apply for a wrongful termination order under sections 57(2) and 58(2) of the Private Housing Tenancies (Scotland) Act 2016 where the tenant has been served with a Notice to Leave or where the Tribunal has granted an order for possession. Please clarify the basis upon which this rule has been included as there does not appear to be any evidence of a Notice to Leave having been served, or a possession order having been granted by the Tribunal.

Please note the Tribunal cannot provide you with legal advice. Given the nature of the information requested we would strongly urge you to seek advice from a solicitor prior to providing a response. If you cannot obtain



advice from a solicitor there are free advice services available and you can find links to some of these under the “useful links” button on the Housing and Property Chamber website.

Please reply to this office with the necessary information by 12 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

3. A request for further information was made to the Applicant on 12th March 2024 as follows:

1. Please as a matter of urgency address the issues raised in the email of the Tribunal to you dated 29 January 2024. If you do not reply to this request and make representations on the issues raised in the email, the applications will have to be formally rejected and the decisions published on the register. You are strongly advised to seek legal advice in the matter. If you are not able to pay for a solicitor you can contact one of the free advice services. The website of the Tribunal provides links to some of these organisations under “Useful Links” button on the top left orange banner on the home page.

2. If you do not reply to this second request for further information within the time limit stated the Tribunal will consider that you are failing to co-operate with the application process and gives you notice that it may reject the applications due to lack of insistence on your part.

3. If you wish to withdraw the applications please do so in an email referring to every case number for which you wish to withdraw the application.

4. In addition to the matters raised in the request of 29 January 2024 please also address the following issues:

a) The applications are made naming the University of Glasgow as the Applicant and as the Respondent. There is no indication that any documentation submitted actually relates to the University of Glasgow. Please explain why you name the University of Glasgow as the Applicant and as the Respondent or amend the applications accordingly.

b) Please clarify when you moved into the property.



- c) Please clarify how you were evicted and when and by whom.
- d) Please clarify who you paid a deposit to, how much and when and provide evidence of same.
- e) Please clarify on what basis you name Graeme Lindsay as one of the Respondents. Did you actually move into the property? Did you ever have a tenancy agreement or any contact with Graeme Lindsay? Did you pay any sums of money to Mr Lindsay?
- f) You seem to seek payment of a specific amount of money as the order you wish the Tribunal to grant. If you wish to make a civil application for payment of sums arising from a Private Residential Tenancy you may wish to consider the terms and requirements of an application under rule 111. Again you are strongly advised to seek legal advice. If you are not able to pay for a solicitor you can contact one of the free advice services. The website of the Tribunal provides links to some of these organisations under “Useful Links” button on the top left orange banner on the home page. Should you wish to change your applications to an application under rule 111 you would have to do so in writing.

Please reply to this office with the necessary information by 26 March 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

- 4. The applications were considered by a Legal Member on 22nd April 2024.

Reasons for Decision

- 5. The Tribunal considered the applications 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."

6. The Applicant has failed to provide the information requested and the applications cannot be accepted in their current form.
7. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that the applications made under Rules 47, 67, 69 and 78 are frivolous, misconceived and have no prospect of success.
8. The Applicant has not provided the necessary information or documentation for the application made under Rule 110, including evidence showing that the tenancy was unlawfully terminated. There is good reason to believe it would not be appropriate to accept the application.
9. The applications are 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.

H Forbes

22nd April 2024

Legal Member/Chair

Date