



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 Mrs Kerry McGhee in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/24/1574

At Glasgow on the 13 May 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) and (c) of the Rules.

1. This is an application for eviction by in terms of Rule 65.
2. The application was dated 22 March 2024 and received by the Tribunal on 9 April 2024.
3. The application was accompanied by the following:-
 1. Lease agreement dated 16 April 2014.
 2. Certificate of posting dated 15 January 2024.
 3. Notice to leave dated 16 June 2022.
 4. Blank AT5.
4. The application was incomplete and the Tribunal wrote to the applicant on 9 April 2024 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”) being served by the landlord on the tenant
- evidence tending to show that the possession ground or grounds has been met
- a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable)

- evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority.

5. The applicant responded on 1 May 2024 as follows:

Thank you for your email and your advice for how to move forward. Please accept my sincere apologies for the late reply. I only can access this email in my junk mail last night. I have attached a copy of the "Notice to Leave" which I issued to the client. I sent proof of recorded delivery of this in the initial correspondence. If I need to send anything more, would it be possible to have an extension on the time frame please to allow me to gather all the necessary information to proceed?

Could you help me understand what this point means please? evidence tending to show that the possession ground or grounds has been met - I'm not sure exactly what this means.

In addition, I'm not quite sure if this next point is applicable to me or not, your advice would be greatly appreciated. a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) I have spoken with housing about my intention to sell the property, and my tenant has also made an application seeking a new home and provided them with her 'Notice to Leave.' Is this ok? if there is anything else I need to add, please let me know.

6. 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”.
7. I consider that this application is hopeless and has no reasonable prospect of success, as essential information such as a valid AT6 has not been provided by the applicant despite the Tribunal’s detailed email of 9 April 2024. It also appears that the applicant has erroneously sent a notice to leave to her tenant rather than a notice to quit and AT6. Given the tenancy was constituted in 2014, a notice to leave would not be applicable as it only applies to private residential tenancy agreements constituted after 1 December 2017. The tenancy agreement in this application would therefore be an assured tenancy in terms of the Housing (Scotland) Act 1988. Even if the ‘notice to leave’ could be considered a valid notice to quit, there are further difficulties with this application. The ish date in the tenancy agreement appears to be the 3rd of the month and the notice to leave has an ish of 16 June 2024. The applicant is seeking eviction to sell the property however this is not a valid eviction ground in terms of the Housing (Scotland) Act 1988. The notice to leave refers to ground 1 but ground 1 of schedule 5 of the Housing (Scotland) Act 1988 relates to the landlord seeking possession as his only or principal home.

8. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is incomplete and in her most recent communication with the Tribunal, the Applicant appears to be seeking advice from the Tribunal regarding how to proceed. The Tribunal is an impartial body and cannot provide advice.

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.



Lesley Anne Ward

Legal Member