

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/24/0766

**Parties**

**Patrick Nevin (Applicant)**  
**Marion Burnett (Applicant’s Representative)**  
**Vicky Blackhurst (Respondent)**

**29 Kippielaw Park, Mayfield, Dalkeith, Midlothian, EH22 5AL (House)**

1. By application received on 16 February 2024 the Tribunal received an application for an eviction order from the Applicant. The application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 19 March 2024 the Tribunal wrote to the Applicant in the following terms:-

*“Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following:*

*It would appear that the application cannot be accepted as you have not provided us with the correct notice served upon the Respondent. As this is a private residential tenancy, the correct notice is a Notice to Leave and not a Notice to Quit, which is only applicable to assured tenancies. If you have not served a Notice to Leave, please consider withdrawing the application and serving the correct notice. You may wish to take advice to ensure the Notice to Leave is completed and served properly. You should also be aware of the following:*

1. *We would require to see evidence of service of the Notice to Leave by an acceptable method.*
2. *We would require a rent statement showing rent due, rent paid and a running total of rent arrears.*
3. *Bank statements should have sensitive information redacted as they are shared with the Respondent when an application is accepted.”*

3. The Tribunal received no response. On 25 April 2024 the Tribunal wrote again to the Applicant's representative in the following terms:-

*"It is noted that you have failed to provide the further information requested by email dated 19 March 2024. We now write to advise you that if you fail to provide this information within the next two weeks the tribunal may have no option but to reject your application.*

*You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations*

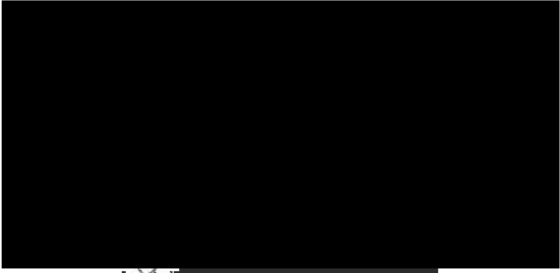
*Please reply to this office with the necessary information by 9 May 2024. If we do not hear from you within this time, the President may decide to reject the application."*

The Tribunal received no response from the Applicant's representative, nor the Applicant.

4. 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".
5. 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. There is no evidence that a Notice to Leave has been served on the Respondents. In terms of section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 an application for an eviction order in relation to a private residential tenancy must be accompanied by a Notice to Leave. I am satisfied that the tenancy between the parties is a private residential tenancy. Accordingly I conclude that in the absence of a Notice to Leave the Tribunal cannot entertain the application and it therefore falls to 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**  
**24 May 2024**