



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 Mr David Currie in terms of rule 79 of the Rules.

Case reference FTS/HPC/EV/24/0498

At Glasgow on the 29 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 by Mr David Currie for eviction in terms of rule 79 of the Rules. The Application was dated 2 January 2024 and received by the Tribunal on 1 February 2024. There was a second application for eviction in terms of rule 65.
2. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 2 February 2024 seeking further information as follows:

Thank you for your application. Could you please provide to the Tribunal the following information:

- 1) This application appears to relate to a short assured tenancy agreement. An application to remove the tenant should be made under either Rule 65 or Rule 66. Please confirm which Rule you wish to proceed under and that you wish to amend the Rule number in your application form.
- 2) Copy notice to quit.
- 3) Proof of service of the notice to quit.
- 4) Copy section 33 notice (if a Rule 66 application) or form AT6 (if a Rule 65 application)
- 5) Proof of service of either the section 33 notice or the form AT6
- 6) Section 11 notice.
- 7) Proof of service of the section 11 notice.

8) Evidence to support the ground upon which you rely.

3. The applicant did not respond.
4. The Tribunal sent a reminder on 29 February 2024. The applicant did not respond.
5. The Tribunal sent a further request for information on 1 May 2024 as follows:

We have received two applications from you for the same Property and tenancy. These applications have been assessed by legal members with delegated authority of the Tribunal President and further information has been requested for both.

Application EV/23/4280 made on 29 November 2023. This application is made under Rule 65 – short assured tenancy being terminated in respect of tenancy breach, being Grounds 14 and 16. We pointed out and explained to you that there are flaws in the process you have followed and the Rule you have used which invalidate the tribunal's acceptance of the application. We asked you for further information and you did not respond.

Application EV/24/0498 made on 23 January 2024 This application is made under Section 23 of the Rent (Scotland) Act 1984 and Rule 79. You have used case 10 as your ground for the application. We wrote to you about this application, too, and pointed out and explained to you the flaws in the process you have followed and the Rule you have used which invalidate the tribunal's acceptance of this application. We asked you for further information and you did not respond.

In both of our letters, we suggested that you may wish to seek legal advice as matters relating to eviction can be complex. The tribunal cannot provide you with legal advice. We strongly advise that you take legal advice or that you consider withdrawing the applications and recommencing the process using the correct procedure and Rules. Please reply to this and our earlier letters by 10 May 2024 or your applications may be rejected.

6. The applicant has not responded.
7. 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”***.
8. *“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”*.

9. I consider that this application is misconceived and has no reasonable prospect of success. The application relates to the Rent (Scotland) Act 1984 however it appears that a short assured tenancy has been constituted and the application should be either in terms of rule 65 or rule 66 rather than rule 79.
10. 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 the applicant has failed to cooperate with the Tribunal in the execution of its duties.

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.

L Ward



Lesley Anne Ward

Legal Member