



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 65 of the Rules.

Case reference FTS/HPC/EV/23/4280

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 65 of the Rules. The Application was dated 5 November 2023 and received by the Tribunal on 29 November 2023. There was a second application for eviction in terms of rule 79.
2. The application was incomplete and the Tribunal wrote to the applicant on 1 December 2023 as follows:

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

- a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give
- 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 of the notice to quit being served by the landlord on the tenant (if applicable)
- 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.

Please note that we tried to send this information to the e-mail address contained in your application form, the e-mail could not be delivered, as there seems to be an error with the e-mail address. Please confirm your e-mail address, if you wish to receive communication by e-mail. You can also respond by post or e-mail to the e-mail address below. Please reply to this office with the necessary information by 8 December 2023, otherwise the application may be

3. The applicant responded on 8 December 2023 by providing screenshots of part of the tenancy agreement. No other documents were produced.
4. The in-house convenor reviewed the application and the tribunal wrote to the applicant on 8 January 2024 seeking further information as follows:

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

- (1) The titles show that the property is owned jointly by you and SAARY JAMAL AL-OBAIDI. Please relodge the application with you both as joint applicants, or provide a letter from the other owner consenting to the application.
- (2) Your application refers to Ground 16 of Schedule 5 of the Housing (Scotland) Act 1988. Please provide a copy of the inventory of furniture provided as part of the tenancy.
- (3) The Notice to Quit provided is dated 1st September 2023 but states that the tenant must vacate by 3rd November 2022. Please address the Tribunal on why you consider this to be a competent notice.
- (4) Please provide proof of service of the AT6 and Notice to Quit. This should be in the form of the recorded delivery slip. This is required for the Tribunal to be able to check that the tenant was given the correct notice period. The email from the tenant does not suffice for this purpose.

Please reply to this office with the necessary information by 22 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant responded on 24 January 2024 by providing a further document which he referred to as a notice to quit.
6. The in-house convenor reviewed the application again and the Tribunal sent a further letter on 29 February 2024 as follows:
 - (1) We note you have not provided a copy of the tenancy agreement can you please provide a copy of it so that we can check the dates of the tenancy and the parties.
 - (2) With regard to your response to the query regarding the original notice to quit which appeared to ask the tenant to leave on a date that pre dated the date of the Notice, you have provided another form of notice but this is not in the prescribed form. The letter you have provided does not comply with the requirements for a valid Notice to Quit which must comply with the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and have to contain the following:- be in writing, state the date by which the tenant must leave, state that once the notice has run out, the landlord still has to get an order from the tribunal before the tenant has to leave, include information about advice. Your notice to quit does not contain this information and so please advise why you believe it is a valid notice to quit and

can be relied upon in this application. You may wish to take legal advice on this point, as matters concerning evictions can be complex.

- (3) If you are able to provide a valid notice to quit we do require to see evidence or have evidence presented at a Tribunal to show the notice was served properly which can be by recorded delivery or sheriff officer service. You advise that you have lost the certificate of posting. Can you confirm if it was served by recorded delivery and if so when it was served?
- (4) In addition, any application for eviction must be accompanied with an s11 notice to the local authority and evidence of service. Please let us see the notice and evidence of service. Please reply to this office with the necessary information by 14 March 2024. If we do not hear from you within this time, the President may decide to reject the application.

7. The applicant has not responded.

8. 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.

9. The applicant has not responded.

10. 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”***.

11. “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”.

12. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The application is incomplete as there is no valid notice to quit and proof of service. There is no section 11 notice and no proof of service. There is no proof of service of the AT6.
13. 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