



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 John and Sheila Maxwell in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/24/1280

At Glasgow on the 16 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 18 March 2024 and entered in the case management system for the Tribunal on 19 March 2024. There was a second application in terms of rule 66.
3. The application was accompanied by the following:-
 1. Undated Lease agreement.
 2. Undated Section 33 notice dated
 3. Notice to quit dated 25 September 2023.
 4. AT6 dated 25 September 2023.
 5. AT5 dated 12 August 2013.
4. The in-house convener reviewed the application and the Tribunal wrote to the applicant on 12 April 2024 as follows:
 - Please provide a signed and dated copy of the AT6 along with proof of service on the Respondent.
 - Please confirm the Ground relied upon. Ground 10 only applies where the tenant has served the landlord a Notice to Quit and has not vacated the Property. The reference in the AT6 is to recovery of possession on termination of a short assured tenancy (Rule 66) which is not one of the Grounds in Schedule 5 to the 1988 Act. You may wish to consider withdrawing this application.

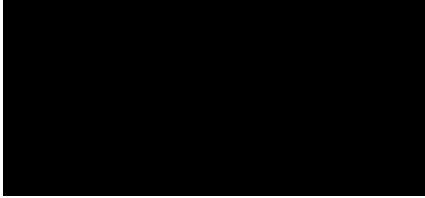
- Please provide proof of service of the Notice to Quit and Section 33 Notice on the Respondent.
 - Please provide a copy of the section 11 Homelessness Notice along with proof of service on the local authority.
 - Please provide proof of landlord registration.
5. Please provide a signed and dated copy of both the Notice to Quit and Section 33 notice.
6. The applicant responded on 26 April 2024 as follows:
- I attach a copy of the recorded delivery letter and subsequent e mails. The tenant acknowledged this and forwarded on to North Ayrshire Council who eventually accepted it. They contacted me directly and advised that I would have to the Court to obtain possession of my property.
 - I am not sure how to proceed here. Our intention is to sell the property as we cannot afford to run it anymore due to increasing costs. To do so we must repossess as the tenant has refused to leave at the end of the tenancy. Have I made a mistake in ticking both boxes on the “Form E”?
 - • The Section 33 Notice is with the “Notice to Quit” and dated 25th September. This was sent at the same time as the Notice to Quit by E Mail and Recorded Delivery and, again acknowledged by the tenant and North Ayrshire Council.
 - Attached are Section 11 Notice and Copy of E Mail to North Ayrshire Council.
 - Proof of Landlord Registration
 - Signed Copy of NTQ and Section 33 attached.
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”**. “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”.
8. 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 12 April 2024. It is open to the applicant can proceed with the second application in terms of rule 66.
9. 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 his 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