



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/24/0719

Parties

Elizabeth Corbett (Applicant)
Cara Kelly (Respondent)

131 Nelson Avenue, Howden South, Livingston, EH54 6LA (the Property)

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in relation to a private residential tenancy between the parties. 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 15 April 2024 the Tribunal wrote to the Applicant in the following terms:-

“A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:

1. Please provide an actual Notice to Leave. This is a statutory form. The document you have provided does not state all the information required in terms of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended. Without this you cannot make a valid application for eviction order.

2. Please provide a S 11 notice as required. S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents. Without this you cannot make a valid application for an eviction order.

3. Please provide a copy of the tenancy agreement. The document submitted states neither the tenant nor the landlord of the tenancy.

4. You state the Respondent has moved out. Please provide the current address for the Respondent, or, if you cannot provide this, apply if necessary for service by advertisement in terms of Rule 6A of the Tribunal's Rules of Procedure. You can find the form for Service by Advertisement on the Tribunal's website. Should you have to submit an application for Service by Advertisement please lodge this together with a negative tracing report from either a tracing agent or Sheriff Officers to confirm the steps you have taken to ascertain the Respondent's address.

5. Please provide evidence that you own the property in question. The land register discloses two joint owners for the property, neither of which match your name.

You may wish to consider withdrawing the application if you cannot provide the above documents and to obtain legal advice.

Please reply to this office with the necessary information by 29 April 2024. If we do not hear from you within this time, the President may decide to reject the application."

The Tribunal received no response. On 29 May 2024 the Tribunal wrote again by email to the Applicant in the following terms:-

"It is noted that you have failed to provide the further information requested by email dated 15 April 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 12 June 2024.

If we do not hear from you within this time, the President may decide to reject the application."

There was no further response from the Applicant.

3. 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".
4. 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.

5. Section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 states that an application for an eviction order against a tenant must be accompanied by a copy of the Notice to Leave which has been given to the tenant. The Notice to Leave must be in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended. In terms of section 52(2) of the 2016 Act the Tribunal cannot entertain an application for an eviction order if it is not accompanied by a valid Notice to Leave. Accordingly the application is futile and 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.

R. O'Hare

Ruth O'Hare, Legal Member
3 July 2024