



**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 Pauline Gallacher in terms of rule 109 of the Rules.

**Case reference FTS/HPC/EV/24/0928**

At Glasgow on the 8 July 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 Ms Pauline Gallacher the owner of the property at 26A Garturk Street Coatbridge ML5 4HA, (‘the property’) for eviction in terms of rule 109 of the Rules. The application was dated 26 February and received by the Tribunal on 27 February 2024.
2. The in-house convenor reviewed the application and the Tribunal wrote to the Applicant on 5 April 2024 seeking further information as follows:

A legal member of the Tribunal with delegated powers from the Chamber President has considered your application. Before the application can proceed we need you to provide us with the following information:-

- It is not clear what type of tenancy you have in place with the Respondent. You have selected Rule 109 on the front page of the Form E which relates to private residential tenancies under the Private Housing Tenancies (Scotland) Act 2016 but have made reference at section 5 to Rule 65 which relates to assured tenancies under the Housing (Scotland) Act 1988. You have also provided a document headed “Notice to Leave” as well as an Form AT6. Please note that there may be further observations from the legal member once they have had the opportunity to consider the terms of the tenancy agreement and the notices served on the Respondent.

- The Form AT6 refers to grounds 8 (rent arrears) and 10 (failure to move after notice period). However in Part 3 you state the reasons for serving the notice as your intention to sell the property. Please clarify the grounds upon which you are seeking an eviction order.
- Please provide a full copy of the section 11 notice served upon the local authority. It appears you have provided only the first page. You may wish to take legal advice prior to providing your reply. If you cannot obtain advice from a solicitor there are free advice services available and you can find links to some of these under the “useful links” button on the Housing and Property Chamber website. Please reply to this office with the necessary information by 19 April 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. The Applicant replied on 8 April 2024 as follows:

As far as I’m aware there was only 1 page to the section 11 notice.

Originally notice was served on the tenant as he actually requested it as he said he couldn’t afford it. He was in arrears with his rent and always has been if I’m honest. It was then I told him I would try to sell it. I never received a payment from him from then on. It’s been quite a difficult situation because he’s actually a friend of the family. He never moved out because the council advised him not to move out until he was evicted as he wouldn’t be rehoused until then.

I know I won’t get the rent arrears from him as he’ll just take out another trust deed as he has previously so I probably won’t bother taking that any further. I thought by trying to do things myself without getting lawyer’s involved would save me some money but if you suggest I start the application again via a lawyer please advise.

4. The Tribunal sent a further email on 7 May 2024 as follows:

The Tribunal is an impartial body and cannot provide advice as to how you should proceed. We cannot progress your application without the information we requested. Please provide a copy of the tenancy agreement and a full copy of the section 11 notice. You may wish to take independent advice from a housing advisory service before responding. Please reply to this office with the necessary information by 21 May 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. The Applicant sent further documents to the Tribunal on 9 May 2024, namely the section 11 notice and a copy of the tenancy agreement.

6. The Tribunal sent a further email on 30 May 2024 as follows:

Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:

Although the tenancy agreement does not have a start date, it was signed on 1st April 2022 and it would seem to be a private residential tenancy. In that case, a Form AT6 is not appropriate, and the notice to leave served upon the Respondent is not in the correct form. There is a specific style of form for such a notice, and the application cannot be accepted with the form of notice that you have served. Please consider withdrawing the

application. You may wish to take legal or other suitable advice before serving a further notice. Please reply to this office with the necessary information by 13 June 2024. If we do not hear from you within this time, the President may decide to reject the application.

7. No reply has been received.
8. 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”***.
9. “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”.
10. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. It appears that a private residential tenancy agreement has been constituted, but there is no valid notice to leave or proof of service of the notice to leave. It appears that the Applicant has erroneously served an AT6 and invalid notice to leave on the tenant.
11. 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 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.

Lesley Anne Ward

Legal Member

