

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/1955

Parties

David Stirrat (Applicant)
Deburahanne McInally (Respondent)

104 Glenhove Road, North Carbrain, Cumbernauld, G67 2LB (the Property)

1. By application received by the Tribunal on 30 July 2024 the Applicant sought an eviction order against the Respondent under Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 23 May 2024 the Tribunal wrote to the Applicant’s representative in the following terms:-

“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:

1. It is not clear that you have proceeded under the correct rule or served the correct notices upon the Respondent. The tenancy agreement you have provided commenced on 20th October 2023, but you have proceeded under Rule 65, which applies to tenancies that commenced before 1st December 2017. In order to assess whether this is an assured tenancy, please provide us with all tenancy agreements that have been put in place, and a full explanation of the circumstances.

2. If this is an assured tenancy, you should be aware that there is no ground of possession in the legislation that would allow you to proceed on the basis that you wish to sell the property. If it is a private residential tenancy, that is an applicable ground; however, you have not served the correct document to give notice to a tenant under a private residential tenancy. It may be the case that you will have to withdraw the application and you are strongly advised to take advice on your options going forward.

You should also be aware of the following:

3. *You have not provided a section 11 notice with evidence of service upon the local authority.*

4. *When making an application, you must provide evidence of service of the applicable notices upon the Respondent.*

5. *It is not clear why you have provided a Form 6 requesting information from the tenant.*

6. *The Title Deed shows a joint owner of the property. If that is still the case, we would expect the joint owner to be a joint applicant or to provide their written authorisation to you making the application in your sole name.”*

The Applicant responded by letter dated 30 May 2024. He provided a rent diary over a ten year period, a number of different tenancy agreements, a letter from the joint owner confirming her consent for him to proceed with the sale of the property and a section 11 notice to North Lanarkshire Council.

On 1st July 2024 the Tribunal wrote again to the Applicant in the undernoted terms:-

“We refer to your email of 29 May 2024 with further information and documents. Unfortunately, the information does not assist in determining that you have used the correct statutory procedures. It would seem that you have been attempting to renew a short assured tenancy or assured tenancy which began in August 2015. You have provided a series of tenancy agreements but there are both overlaps and gaps in the dates and some dates appear to have been amended or overwritten. In particular, one agreement ended on 3 June 2023 and the next agreement began on 20 October 2023, at which time short assured tenancies or assured tenancies had become defunct.

It is also not clear if you are proceeding on a contractual end to the tenancy or if there are grounds to terminate. If you are proceeding on Rule 65 or 66, the Notice to Quit which you sent is not in the prescribed form and there is no Section 33 Notice, if this is relevant. You have not submitted proof of service of any of the Notices, nor have you provided proof of sending and receipt of the Section 11 Notice to the local authority.

Residential tenancy law is complex and there are strict statutory procedures to bring tenancies to an end. The tribunal cannot provide you with specific advice or assistance but can only guide you to the information which is required to make a competent application. You should consider taking legal advice and should consider withdrawing this application and starting afresh once you have taken advice.”

The Applicant responded by letter dated 4 July 2024. In summary he advised that the break in the tenancy agreements had been a result of his own health issues, and that the section 11 notice had been emailed to North Lanarkshire Council. He also provided two special delivery slips, one for the Tribunal and one for the Respondent, both dated 26 April 2024. He advised that the

Respondent was refusing access to the property and there was no tenancy deposit remaining due to a relationship breakdown between the Respondent and her partner. He queried who would pay for any damage to the property as a result, and stated that he had always been an excellent landlord. He asked the Tribunal why it was not a straightforward process to evict a tenant.

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. It remains unclear as to the exact nature of the tenancy between the parties, and the Applicant has been unable to evidence that he has complied with the statutory processes for recovering possession of either an assured tenancy or a private residential tenancy. He has been asked for evidence of service of notices upon the Respondent, however the only evidence produced has been a special delivery receipt in the Respondent's name dated 26 April 2024. The application in this case was received on 30 April 2024. Whilst the Applicant has stated that he previously served notices on the Respondent at an earlier date, these have not been produced. In the absence of any evidence to the contrary, the Tribunal can only conclude that the application is premature.
5. If the Tribunal were to be persuaded that the tenancy between the parties is a private residential tenancy the Applicant has not produced a notice to leave. 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.
6. If the tenancy is in fact an assured tenancy, the Applicant would require to identify an eviction ground in schedule 5 of the Housing (Scotland) Act 1988 to rely upon in an application for repossession. The Applicant has produced a Form AT6, with the ground stated as his intention to sell. That is not a ground available to landlords with assured tenancies under schedule 5 of the 1988 Act.
7. If the tenancy is a short assured tenancy, a landlord would require to serve a notice to quit and section 33 notice on the tenant prior to making an application to the Tribunal. The Applicant has failed to produce a section 33 notice.
8. Accordingly, the Tribunal concludes that the application is bound to fail due to the Applicant's failure to comply with the required statutory process applicable to the tenancy between the parties. The application is therefore futile and therefore falls to be rejected.
9. Residential tenancy law can often be complex, and the Tribunal does have sympathy with the Applicant who expressed the stress he had experienced in

going through the process. It would however strongly benefit him to seek independent legal advice prior to submitting a future application to ensure that any application is compliant with the strict statutory requirements applicable to the tenancy between the parties.

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.

Ruth O'Hare, Legal Member
30 July 2024