



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 Garry Smith in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/24/1230

At Glasgow on the 5 August 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 Gary Smith, the owner of the property at 4 Windyledge Terrace, Forfar, DD8 1LU, (‘the property’) for eviction in terms of rule 109 of the Rules. The application was made by Mr Robert Innes of Scottish Paralegal Services. It was dated 7 February 2024 and received by the Tribunal on 14 March 2024.
2. The in-house convenor reviewed the application and the Tribunal wrote to the Applicant’s purported representative on 8 April 2024 seeking further information 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:

- (1) Please provide a signed mandate from the Applicant authorising you to act on their behalf in this application.
- (2) Please confirm that the third party neighbour is agreeable to their statement being shared with the Respondent, as all application paperwork will be shared.
- (3).Please provide a rent statement showing rent due, rent paid and a running total of rent arrears to support ground 12A.

(4). Please confirm whether the Applicant has complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and provide evidence of this, if available. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant the order.

3. No reply was received and a reminder was sent on 20 May 2024.

4. The Applicant's purported representative replied on 2 June 2024 as follows:

Good Evening As asked for this has been a on going situation for my client since March 2023 , we have submitted all this before

And yet again we have to follow this up again due to the postal strike last year causing this to run on

Our client has had less money for rent since March 2023 , the property is like a pig sty , the neighbours have complained to the tenant on many occasions, we have produced the evidence you requested yet this tenant is causing my client serious distress, debt problems yet she lives there with not a care in the world screwing the system and the landlord

We seek that the tenant comes to the tribunal and our landlord as well and we can see who the person that thinks the system is in her favour yet our client has had enough of this stress

We look forward to a tribunal

Regards Mr Innes this email is written entirely without prejudice to and under reservation of our clients rights , titles , and pleas , in law and this email can be produced in a court of law as evidence

5. No mandate was received and no substantive response was made to the Tribunal's request for information.

6. The Tribunal sent a further email on 26 June 2024 as follows:

Your further information 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) Please resubmit your further information response, removing the 'without prejudice' statement from your email as it is cannot be accepted if submitted on a without prejudice basis. Without prejudice is a phrase used in negotiations where parties do not wish these negotiations to be referred to in judicial proceedings. It is not appropriate to include such a restriction in correspondence to a judicial body such as the Tribunal.

(2) You state that you have already supplied the information which we requested. Please be assured we have not received the requested documentation previously, hence our request.

(3) Please provide, as requested, a rent statement showing rent due, rent paid and a running total of rent arrears. Please reply to this office with the necessary information by 10 July 2024. If we do not hear from you within this time, the President may decide to reject the application.

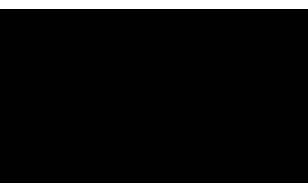
7. The Applicant's purported representative wrote to the Tribunal on 19 July 2024 stating that the Applicant wishes to sell the property. No mandate or further documentation has been provided.
8. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if "**they consider 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. No rent statement has been provided in support of one of the eviction grounds. In relation to other evidence provided it is not clear the third party has given their consent to this being shared.
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's representative has failed to provide a mandate authorising him to act and 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