



**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/24/0879

**Parties**

**Ian Kenmuir (Applicant)**  
**Property Angels Letting and Management (Applicant’s representative)**  
**Robert Rowlands (Respondent)**

**89 Dalriada Crescent, Motherwell, ML1 3XT (the Property)**

1. By application received 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 25 March 2024 the Tribunal wrote to the Applicant’s representative in the following terms:-

*“A Legal Member of the Tribunal with delegated powers of the President has considered your application.*

*1. There appears to be a joint tenant named on the tenancy agreement. Please confirm that the applications are to be amended to include him and provide evidence that he has been served with the notice to leave. Please provide an address for him if he no longer lives at the property.*

*2. Please provide a complete rent statement for the whole period of the arrears.*

*3. Please provide evidence that the Respondent has agreed to service of notices by email as there is no provision for this in the tenancy agreement.*

*Please reply to this office with the necessary information by 8 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 23 May 2024 the Tribunal wrote again by email to the Applicant’s representative in the following terms:-

*“A Legal Member of the Tribunal with delegated powers of the President has considered your application and notes that you have failed to provide a response to a request for information.*

*A further copy of this is attached. Please respond within 14 days or your application may be rejected. Please reply to this office with the necessary information by 6 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’s representative.

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. This application pertains to a joint tenancy as per the tenancy agreement produced by the Applicant. The Applicant has failed to provide a copy of the notice to leave given to one of the joint tenants and has failed to provide an explanation for this. Accordingly the application is *prima facie* 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.

**Ruth O'Hare, Legal Member**  
**3 July 2024**