



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 Paul Kellock in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/24/0049

At Glasgow on the 16 September 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 Paul Kellock for eviction in terms of rule 109 of the Rules. The Application was made on 8 January 2024.
2. The application was incomplete. The Tribunal wrote to the applicant on 8 January 2024 seeking the following:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- evidence showing that the eviction ground or grounds has been met.
- evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant. Please reply to this office with the necessary information by 15 January 2024, otherwise the application may be rejected.

3. The applicant responded on 8 January 2024 as follows:

To whom it may concern, I can confirm that Mr Gordon Muir was given the Notice to leave on 27th of November 2023 this was hand delivered by myself and witnessed. I can also confirm that Mr Muir has been to Fife council officer Kyle Graham Wellesley road Methil with the notice to leave. There was no written permission given to myself as the landlord for Mr Muir being at the property. My tenant was His mother Mrs Elizabeth Muir who is deceased. I am also struggling and have been for some time with my own financial

situation. I am a war disabled pensioner and living on pension during this cost of living crisis. Best regards Paul Kellock.

4. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 8 February 2024 as follows:

The application appears to have been made against the wrong person. The Respondent does not appear to be a tenant as one of the existing tenants is still alive. The application must be made against the remaining tenant. Please provide an amended application form with the tenants name and address provided. This must show his current address if he no longer resides at the property. You must also provide

- (1) A notice to leave which has been served on the tenant, with evidence of service.
- (2) If the tenant lacks capacity the notice to leave should be served on the person who has been appointed as guardian or attorney in terms of a guardianship or power of attorney. You must also provide these details in the form.
- (3) Clarification of the grounds for eviction, as there are three grounds in the notice to leave but only one in the application form.
- (4) A copy of the death certificate or other evidence that the joint tenant has died.
- (5) Evidence of ownership of the property. You appear to be the Executer of one of the owners. Please clarify.
- (6) If you are proceeding on grounds 1 ad 1A please note that the current notice to leave does not give the correct period of notice.
- (7) Evidence in support of the intention to sell and of financial hardship. You may wish to take legal advice before you respond.

5. The applicant responded on 15 March 2024 to confirm that one of the tenants is still alive and in a care home. He also submitted the death certificate for the deceased tenant.
6. The Tribunal wrote to the applicant on 25 March 2024 to reiterate that the application has been made against the wrong person, as the respondent is not a tenant. The applicant responded on 28 March 2024 by stating the respondent is the guardian of his living tenant Mr Ian Muir. He also provided an email from Fife Council to this effect.
7. The Tribunal wrote to the applicant on 26 April 2024 as follows:

Another Legal Member of the Tribunal has considered your application, following on from our previous correspondence with you. It is noted that you have responded in detail to our previous communication dated 25 March 2024 on 28 March 2024.

It is appreciated that you are frustrated at the process and the time the application is taking to be accepted. However, it is not possible for the Tribunal to allow an application to progress to the next stage if it appears that the application is not valid.

As previously advised, it appears your application has been brought against the wrong person. From examination of the paperwork, it appears that the only tenancy in place is between yourself and Mrs Elizabeth Muir and Mr Ian Muir and commenced on 10 February 2020. It is noted that Mrs Elizabeth Muir is now

deceased and Mr Ian Muir is now permanently resident in a care home. The paperwork you have provided from Fife Council confirms that there is a Guardianship in place for Mr Ian Muir, which names his brother and sister as his legal guardians. It is assumed from what you have stated in your correspondence that Mr Gordon Muir is now residing at the property without your permission and this is why you have made the application against him. In law, he would appear to be an “unlawful occupier”.

In order to legally terminate the existing tenancy, you require to serve a Notice to Leave on the remaining tenant, Mr Ian Muir, and then submit a fresh application to the Tribunal against him. When the paperwork from Fife Council refers to you serving paperwork on Mr Ian Muir’s guardians, the Legal Member considers that they mean you should notify them, in their capacity as his guardians, of any eviction action against Mr Ian Muir. You may, however, wish to double-check the position with Fife Council and also check that the Guardianship has been renewed, as their latest communication states that the Guardianship was due to expire on 24 April 2024.

The Tribunal is unable to provide you with legal advice in this matter and would recommend, again, that you seek your own legal advice in relation to these matters as this is a complex area of law, further complicated by the unusual facts of this case. Once you have considered your position or sought advice in the matter, you may wish to withdraw this application as, otherwise, it is likely to be formally rejected. 2 Please reply to this office with the necessary information by 17 May 2024. If we do not hear from you within this time, the President may decide to reject the application.

8. The applicant sent further emails to the Tribunal on 3 May 2024 which suggested that the applicant was seeking to make a new eviction application. The Tribunal wrote to the applicant on 24 May 2024 as follows:
 - (1) Please confirm whether or not your emails of 3 May 2024 with enclosures are intended to be a new application. If so please confirm the current application (EV/24/0049) is to be withdrawn.
 - (2) If your emails of 3 May 2024 are intended to be a new application: a. Please provide your comments on the validity of the Notice to Leave given that Ground 1 is relied upon and you have not provided the required 84 days’ notice; b. Please provide proof of delivery of the Notice to Leave as you have only provided proof of postage; c. Please provide proof of delivery of the section 11 Notice as you have only provided proof of postage. Please reply to this office with the necessary information by 7 June 2024. If we do not hear from you within this time, the President may decide to reject the application.
9. The applicant responded on 30 May 2024 stating that he did not intend to make a new application.
10. The Tribunal sent a further request for information to the applicant on 25 June 2024 as follows:
 - (1) You need to clarify the legal basis upon which you wish to proceed against Gordon Muir. There are at least 3 possibilities:-
 - a) If your position is that he has no right or title to be there, you will need to explain why you consider the Tribunal has jurisdiction to determine the application.
 - b) If your position is that the tenant (Elizabeth Muir and Ian Muir) gave Gordon Muir permission to stay in the property, then you do not need to raise separate proceedings against Gordon Muir. You can withdraw the application under case reference EV/24/0049 and proceed with your action under case reference EV/24/2052 against Ian Muir. If successful, you can seek to have Gordon Muir removed by virtue of section

216 (2) of the Bankruptcy and Diligence etc Scotland Act 2007. However, you have not provided sufficient notice to Ian Muir under case reference EV/24/2052. The Private Housing (Tenancies) (Scotland) Act 2016 provides that 84 days' notice is required to proceed with ground 1.

c) If your position is that a new tenancy has been created in relation to Gordon Muir, you will have to specify when that new tenancy started, so that we can determine whether the notice served by you is valid.

(2) Please now advise whether you wish to proceed with either of these applications as they stand. We have already advised that the notice to leave appears to be invalid. You may wish to withdraw both applications to enable you to serve the correct notice on the correct person.

11. No response has been received. A reminder was sent on 6 August 2024 and the applicant has not responded.
12. 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”***.
13. ***“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”***.
14. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The application has been raised against the wrong person and there is no prospect that the eviction will be granted.
15. Rule 8(1) (c) provides that the Chamber President must reject an Application if they have good reason to believe it would not be appropriate to accept it. I consider I have good reason not to accept this application as it has been raised against the wrong person and the applicant has failed to respond to the last two requests for information sent to the applicant on 25 June 2024 and 6 August 2024.
16. It is open to the applicant to make a new application with the correct parties once he has served the correct notices.

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