



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 Mrs Paula Boyle in terms of rule 65 of the Rules.

Case reference FTS/HPC/EV/24/1752

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 Mrs Paula Boyle 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 18 April 2024 seeking the following:
 - evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”) being served by the landlord on the tenant.
 - evidence of the notice to quit being served by the landlord on the tenant (if applicable) • evidence tending to show that the possession ground or grounds has been met
 - a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable)
 - evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority Please reply to this office with the necessary information by 25 April 2024, otherwise the application may be rejected.
3. The applicant responded on 18 April 2024 by providing a copy of the tenancy agreement, notice to quit and AT6 as well as a quote for selling the property.

4. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 14 May 2024 as follows:
- We acknowledge receipt of the Notice to Quit and Form AT6. However we require to see evidence that this has been served on the tenant, e.g. a recorded delivery receipt or sheriff officers certificate. Please provide same;
 - We note you have provided correspondence from the local authority. However we require sight of the section 11 notice that must be served on the local authority together with proof of delivery (e.g. covering email, postal receipt). If you are unsure as to what a section 11 notice is we would encourage you to seek advice from an independent solicitor or an advice agency. You can find information on local advice agencies on the useful links section of the Tribunal website.
 - You are relying upon ground 1 of schedule 5 of the Housing (Scotland) Act 1988. Ground 1 states that the landlord requires the house for their principal home. However it appears from the information you have provided that you in fact intend on marketing the property for sale. Please confirm the reason why you are relying upon ground 1 and provide any available evidence you may have to support this ground.
- Please reply to this office with the necessary information by 28 May 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant responded on 25 May 2024 as follows:

I hand delivered the NTQ. notes on completing for E states section 6, evidence of the notice to quit being served by the landlord to tenant doesn't state it has to be recorded or served by sherriffs officers. However the tenant has confirmed to me by email that she received the NTQ and I've attached it as evidence,

I apologise for this, i did forget to send the section 11 notice to east lothian council, however they did have receipt of the NTQ which Sophie McFazean confirmed by email, copy attached for evidence. i have now sent the section 11 and email from Sophie confirms this

sorry i appreciate how this could confuse you and on hind sight i probably shouldn't have sent it. What I was trying to show was that we intend to sell our current property (this was quote for this from the estate agent) we live in and downsize to the flat. My husband and I are now retired and we both have had health issues in the last couple of years. selling our current property and downsizing to Church Street will mean less stress for us.

6. The Tribunal wrote to the applicant on 18 June 2024 seeking the details of the exact circumstances of the details of service of the notices given they were hand delivered, including the date of service.
7. The applicant responded on 19 June 2024. She stated the notice to quit was hand delivered on 16 February 2024.
8. The Tribunal wrote to the applicant on 16 July 2024 as follows:

Please confirm the date of service of the AT6. You have confirmed the date of service of the Notice to Quit. The AT6 is signed and dated 18 April 2024. If that is correct then no notice has been provided to the Respondent and the AT6 will be invalid. Please provide your submissions on this point.

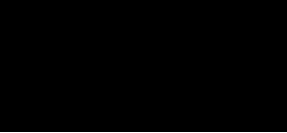
9. The applicant responded on 17 July 2024 stating she had made an error and both the notice to quit and AT6 were hand delivered on 17 February 2024.
10. The Tribunal sent a further request for information to the applicant on 8 August 2024 as follows:
 - (1) Please provide representations as to why the Tribunal should accept the AT6 as valid although it was dated after the application was made?
 - (2) You gave information on 17.7.24 that the notices were hand delivered on 17.2.24 but stated on 19.6.24 that you hand delivered the Notice to Quit on 16.2.24. Please provide confirmation as to how and when both were received by the Tenant. You stated on 25.5.24 that the tenant confirmed receipt of the notices by email, however no email from the tenant to the Applicant was attached to the email, only emails between the Applicant and the local authority.
 - (3) Please provide representations on the validity of the Notice to Quit: The Notice to Quit refers to a Short Scottish Secure Tenancy Agreement rather than an assured tenancy. The Notice to Quit does not provide item 2 of the information required to be provided on each such notice in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended which states “2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.”
 - (4) The property appears to be owned by the applicant and Walker Boyle. Please provide written consent from the joint owner confirming that the applicant was authorised by to act as the sole landlord and to raise these proceeding in their sole name. S 55 (3) of the Housing (Scotland) Act 1988 states: (3)Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, 2 any reference in this Part of this Act to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord or the tenant, as the case may require. You are strongly advised to seek legal advice in this matter.
11. No response has been received.
12. 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 there is a serious discrepancy in the notices provided and the applicant has failed to respond to the request for information sent to her on 8 August 2024. The applicant has therefore failed to cooperate with the Tribunal in the execution of its duties.
13. It is open to the applicant to make a new application.

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