



**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/24/2052**

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) (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 3 May 2024. The applicant had made an earlier application 8 January 2024 which had been allocated the tribunal reference EV/24/0049. There had been a considerable amount of correspondence between the applicant and the Tribunal regarding EV/24/0049. The applicant has provided a tenancy agreement which was a private residential tenancy agreement. There were two tenants, one had predeceased and the other was in a care home. There respondent in EV/24 0049 was the surviving tenant’s son who was not a party to the tenancy agreement.
2. The in-house convenor reviewed the application and 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 If so please confirm the current application (EV/24/0049) is to be withdrawn.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.

3. The applicant responded on 30 May 2024 stating that he did not intend to make a new application. He also stated the following:

To whom it may concern, To me it is one and the same case, whether you choose to call it a different one is completely up to you. I have attached delivery proof for all required. Only 28 days notice was required considering tenant has not been living in the property and breached the agreement. Gordon Muir was given a notice to leave giving him 84 days , but he is the unlawful tenant. not Ian Muir and I still have to proceed and submit that case but you have the proof of postage as I sent at same time as Guardian of Ian Muir.

4. 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.

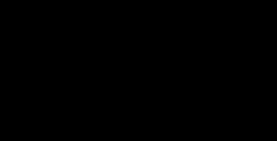
5. No response has been received. A reminder was sent on 6 August 2024 and the applicant has not responded.
6. Rule 8(1) (c) provides that the Chamber President must reject an Application if they have good reason to believe it would not be appropriate to accept it. I consider I have good reason not to accept this application as 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. He has therefor 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