



**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 Ritchie Anderson in terms of Rule 109 of the Rules.

**Case reference FTS/HPC/ EV/24/2328**

At Glasgow on 2 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 Ritchie Anderson in terms of rule 109 of the Rules.
2. The application was dated 15 May 2024 and received by the Tribunal on 22 May 2024.
3. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 3 June 2024 as follows:  
A Legal Member of the Tribunal had reviewed the paperwork you have provided. Before your application can be accepted we require you to provide us with the following information:-
  - We note that you have included a number of grounds for eviction in part 5 of the application form. However the Notice to Leave you have submitted specifies only one ground, namely ground 10. Can you please amend your application form to reflect the ground stated in the Notice to Leave and resubmit to the Tribunal. If you wish to include other grounds with your application you would require to seek the Tribunal’s permission to permit these as they have not been previously narrated in the Notice to Leave.
  - Can you please provide proof that the Notice to Leave has been sent to the tenant, e.g. covering email or postal receipt.

- It is a legal requirement that the application form must be accompanied by a section 11 notice which has been sent to the local authority, together with proof of sending. Can you please provide the section 11 notice together with the required proof that it has been sent, e.g. covering email, postal receipt.
- We note the tenant is currently imprisoned. We require an address for the tenant in order to serve the application paperwork upon him. Can you please therefore make inquiries as to the tenant's current whereabouts in order to provide an address. If you are unable to obtain a current address you can request that the application paperwork is served by advertisement on the Tribunal's website. However in order to do so you would have to evidence efforts to trace the tenant, e.g. a report from a 2 tracing agent. The application form for service by advertisement is available on the Tribunal's website.

You may wish to take advice from a solicitor or housing advisory service before responding. Please respond within 14 days. Upon receipt of the above information, a decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application. Please reply to this office with the necessary information by 17 June 2024.

4. The applicant responded on 4 June 2024 by sending a copy of the notice to leave and stating that the tenant is no longer residing in the property.
5. The in-house convenor reviewed the application again and the Tribunal wrote to the applicant on 26 June 2024 as follows:

You indicate you believe the tenant has abandoned the property and that he is currently in prison.

If you cannot provide a current residential address for the respondent it will not be possible for the tribunal to serve papers on the respondent in respect of any hearing relating to this application. In those circumstances you require to instruct sheriff officers to attempt to trace the respondent landlord and, if you are able to trace him, to provide us with the up-to-date address.

If sheriff officers cannot trace the respondent then they will provide you with a report confirming same and you can then apply to the tribunal to have notice of the application served on the respondent by means of advertisement on the tribunal website.

The tribunal cannot make these inquiries. We are an independent judicial body.

You were asked to provide proof that the Notice to Leave has been sent to the tenant, e.g. covering email or postal receipt. The screenshot you have submitted is not sufficient. The tribunal requires to see a copy of the email sent to the tenant which clearly shows the email address to which it was sent. Please obtain this.

You were advised that It is a legal requirement that the application form must be accompanied by a section 11 notice which has been sent to the local authority, together with proof of sending. Can you please provide the section 11 notice together with the required proof that it has been sent, e.g. covering email, postal receipt'

Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please respond to this letter within the next two weeks. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. 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.

6. The applicant sent a further notice to leave and a section 11 notice to the Tribunal on 1 July 2024. No further documents were provided and no substantive response was given to the Tribunal's email of 26 June 2024.
7. The Tribunal wrote to the applicant again on 24 July 2024 as follows:

A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:

- (1) Please provide the current address of the Respondent. Should you be unable to do so you can apply for Service by Advertisement, the relevant form can be found on the Tribunal's website. If you do submit an application for Service by Advertisement please submit this together with a negative trace report from either a tracing agent or Sheriff Officers. It is the responsibility of the Applicant to provide all necessary information for a valid application.
- (2) Please provide evidence of how and when you sent the S 11 Notice to the local authority.
- (3) Please explain why you submitted a second Notice to Leave. If you wish to rely on this then the application is premature and should be withdrawn and raised again after the notice period has expired.
- (4) Please also provide evidence of how and when the second Notice to Leave was served on the tenant.
- (5) If you wish to rely on the Notice to Leave previously lodged please provide a statement from Martin & Co that the image they sent you is the evidence from their system of the Notice to Leave being sent and stating the email address to which it was sent as well as any text that was sent in the actual email. Please reply to this office with the necessary information by 7 August 2024. If we do not hear from you within this time, the President may decide to reject the application.

8. The applicant has not responded.
9. In terms of Rule 8(1) (c) of the Rules the Chamber President must reject an application if they have good reason to believe it would not be appropriate to accept it. I have reviewed this application today and I consider there are good reasons why it should not be accepted. It is incomplete and the applicant has failed to respond to three reasonable requests by the Tribunal for further information. The applicant has therefore failed to cooperate with the Tribunal in the execution of its duties.
10. It is open to the applicant to resubmit the application with the correct supporting information.

**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