



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 Graham Milne in terms of rule 65 of the Rules.

Case reference FTS/HPC/EV/24/2571

At Glasgow on the 19 August 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 Graham Milne for eviction in terms of rule 65 of the Rules. The Application was dated 6 June 2024 and received by the Tribunal on that date.
2. The application was incomplete and the Tribunal wrote to the applicant on 6 June 2024 as follows:

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

- A copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give
- 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 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 13 June 2024, otherwise the application may be rejected.

3. The applicant responded on 11 June 2024 by sending further information to the Tribunal including a copy of the AT6 and section 33 notice.
4. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 8 July 2024 seeking further information as follows:

Before a decision can be made, we need you to provide us with the following:

- (1) We note that there is a joint proprietor. Please advise whether she is to be added as an additional Applicant or alternatively provide her written consent to you raising these proceedings alone.
- (2) The notice to quit appears to be invalid because it does not specify the date upon which the tenant should remove from the property.
- (3) The form AT6 does not specify the ground of eviction under schedule 5 of the Housing (Scotland) Act 1988 that you are relying upon. In addition, the form AT6 states at part 4 that proceedings will not be raised before 31/7/24. The period of notice specified has therefore not yet expired. Please confirm that you wish to withdraw the present application to enable you to serve valid notices on the tenant and then submit a further application in due course.
- (4) For future reference, you will require to produce the tenancy agreement, valid notices together with evidence of service, a section 11 notice together with evidence of service and a rent statement.

Please reply to this office with the necessary information by 22 July 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant has not responded.
6. 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”***.
7. *“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”*.
8. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The application is incomplete as there is no valid notice to quit and proof of service. There is no section 11 notice and no proof of service. There is no proof of service of the AT6 and the AT6 is incomplete. The application is also premature, as the AT6 had not expired when it was made.
9. Further, in terms of Rule 8 (1) (c) of the rules I have good reason to consider that it would not be appropriate to accept this application as the applicant has failed to reply to the Tribunal’s reasonable request for information and has therefore 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