

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/24/1831

Parties

James Mitchell (Applicant)
Joseph Reid (Respondent)

27 Ash Court, East Kilbride, G75 9EW (the Property)

1. By application received by the Tribunal on 22 April 2024 the Applicant sought an eviction order against the Respondent under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. Following consideration of the application by a Legal Member of the Tribunal with delegated powers of the Chamber President, the Tribunal wrote to the Applicant requesting further information, including an amended Form E that included the correct grounds for possession, clarification as to the Respondent’s whereabouts, and a rent statement. On 11 June 2024 the Applicant responded by email to the Tribunal. He provided an amended Form E together with excerpt Whatsapp messages, a copy of the Notice to Leave, a rent increase notice and a rent statement.
3. The Tribunal sent a further email to the Applicant on 27 June 2024 requesting further information. In particular the Tribunal stated *“It is also noted that you lodged your application with the tribunal by email dated 22 April 2024. Section 55 of the 2016 Act indicates that a landlord may not make an application to the tribunal for an eviction order against the tenant using a copy of a notice to leave more than six months after the day the Notice period has expired. If your notice period expired on 1 September 2023 then you would HAVE required to apply to the tribunal no later than 1 March 2024. Please explain why you believe your application has been lodged in time.”*
4. The Applicant responded by email dated 10 July 2024. He explained that he had provided the wrong recorded delivery receipt for the notice to leave. He advised that he would sent on the correct receipt. With regard to the expiry of the six month period, he explained that reason the application had not been lodged timeously was due to his ill health and provided medical evidence to support this.

5. On 6 August 2024 the Tribunal wrote to the Applicant by email, noting that he had not fully answered the queries raised in the Tribunal's previous request for information. The Tribunal suggested the Applicant may wish to seek independent legal advice prior to responding. On 20th August 2024 the Applicant responded by email with a recorded delivery receipt for the notice to leave. He sent a further email on 21st August 2024 with additional medical evidence. He advised that the delay between the expiry of the notice to leave and the application to the Tribunal was due to his ill health and asked that this be considered as reasonable grounds for the delay.
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". "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".
7. I consider that this application is frivolous and has no reasonable prospect of success in its current form. The Applicant seeks an eviction order under section 51 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). He has provided a notice to leave which states that the date upon which he can commence proceedings before the Tribunal is 1st September 2023 ("the effective date").
8. Section 55 of the 2016 Act states that a landlord may not make an application to the Tribunal using a copy of a notice to leave more than six months after the effective date. The Applicant submitted his application to the Tribunal on 16 April 2024. In terms of the notice to leave served upon the Respondent the deadline for making an application to the Tribunal was 1st March 2024.
9. The Applicant has cited ill health as a reasonable ground for the delay in raising proceedings. Whilst I do have sympathy with the Applicant's position, there is no discretion for the Tribunal within the provisions of the 2016 Act. There is nothing in the legislation that would permit me to allow an application to be entertained by the Tribunal after the six month period has expired.
10. Accordingly, I concluded that the application is bound to fail as it has not been made timeously and in accordance with the provisions of section 55 of the 2016 Act. The application is therefore futile and falls to be rejected.

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.

Ruth O'Hare,

**Ruth O'Hare, Legal Member
18 September 2024**