

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/24/1993

Parties

Locheden Limited (Applicant)
Cairn Letting (Applicant’s Representative)
Ruth Ofonye (Respondent)

196 Chirnshire Road, Glasgow, G52 2LQ (the Property)

1. By application received by the Tribunal 2 May 2024 the Applicants 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. On 30 May 2024 the Tribunal emailed the Applicant’s representative raising a query regarding the Notice to Leave. In particular the Tribunal wrote *“It appears that the Notice to Leave may not be valid as the date entered in part 4 as the date when proceedings could first be raised does not seem to have been calculated in accordance with the provisions of S 62 (1) (b), S 62 (4) and S 62 (5) of the Private Housing (Tenancies) (Scotland) Act 2016. The date shown in part 4 is 15.4.24. This is the date 84 days after the notice period begins. However, the provision of S 62(4) of the 2016 Act requires the date to be entered to be the date of “the day falling after the day on which the notice period defined in section 54 (2) will expire.” The stated date is thus one before the date that should be entered. The provision of paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020, which gave the Tribunal some discretion in accepting cases where the notice period was not correctly shown due to the changes made by said Act was revoked on 30 March 2022 by the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2022 and thus the previous strict application of the calculation of the period was reinstated. You may wish to take legal advice on the matter. Please make representations as to why you consider the Notice to Leave can be considered valid.”*
3. On 13 June 2024 the Applicant’s representative responded by email to state that the date in the Notice to Leave was an error and should have read 16th April 2024. The Applicant did not however instruct the Tribunal proceedings until the 1st May 2024 which they hoped would be considered. The Applicant had also offered financial support for the Respondent to cover her moving costs and was assisting her in finding alternative accommodation.

4. 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".
5. I consider that this application is frivolous and has no reasonable prospect of success in its current form. The Notice to Leave does not comply with section 62(4) of the Private Housing (Tenancies) (Scotland) Act 2016 in that the date specified as the date upon which proceedings for possession can be raised is one day short of the statutory notice period. Accordingly, I concluded that the application is bound to fail due to the Applicant's failure to comply with the requirements of section 62 of the Act. The Tribunal cannot entertain the application on that basis. 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
15 August 2024**