



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 an application by Mr David Christie in terms of rule 109 of the Rules.

Tribunal Reference FTS/HPC/EV/24/2543

At Glasgow on the 9 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 David Christie, the owner of the property at 74 Croftfoot Road Glasgow G44 5JX ‘the property’, for recovery of possession of the property in terms of Rule 109.
2. The application was dated 4 June 2024 and received by the Tribunal on 6 June 2024.
3. The application was incomplete and the Tribunal wrote to the applicant on 5 June 2024 seeking further information as follows:

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

- evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant
- a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act
- evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority Please reply to this office with the necessary information by 12 June 2024, otherwise the application may be rejected.

4. The applicant responded on 6 June 2024 by providing a copy of an undated notice to leave and some photographs.
5. The in-house convenor reviewed the application and the Tribunal sent a request for further information on 28 June 2024 as follows:

Further information was requested from you by email dated 5 June 2024. You have responded by providing a further copy of the documents lodged with your application. The application has been reviewed by a Legal Member of the Tribunal with delegated powers of the President. Please provide the following further information:

- (1) You have provided a copy of a notice to leave which is undated. It states that an application will not be lodged with the Tribunal before 1 June 2024. Please provide a copy of the dated notice to leave or if you have not retained a copy, please confirm what date it was signed.
- (2) The Tribunal requires to be satisfied that the notice to leave was served on the tenant. Please provide proof of service having taken place. This would commonly be a post office proof of delivery if the notice was sent by recorded delivery post, a sheriff officer certificate of service or a copy email attaching the notice to leave if that method of service was agreed between the Parties.
- (3) Please provide a copy of the tenancy agreement.
- (4) The Tribunal requires to be satisfied that a section 11 notice was completed and sent to the local authority. Please provide a copy of the section 11 notice and proof of it having been sent to the local authority. This would generally be evidenced by providing a copy of the covering email or letter sent to the local authority enclosing the section 11 notice.
Please reply to this office with the necessary information by 12 July 2024. If we do not hear from you within this time, the President may decide to reject the application.

6. The applicant responded on 8 July 2024 as follows:

We originally contacted the tenant in December 2023 to advise that we would like her to move out, the first notice to leave was given on 5th January, another two slightly different versions were given in April. All of these were given in the presence of the tenants sisters. The tenant does not have a current tenancy agreement as it has run out. I have attached a copy of the completed section 11 form sent to Glasgow City Council and email below.

7. The in-house convenor reviewed the application again and the Tribunal wrote to the applicant on 2 August 2024 as follows:

The tribunal cannot assist you with legal advice or interpretation of the legislation or documents. The tribunal can only set out what is required for you to make a competent application.

You have applied under Section 51 of the Private Housing (Tenancies) Scotland Act 2016 and Rule 109 of the Tribunal Rules. The Act requires you to follow a strict statutory process to terminate a tenancy. Rule 109 requires you to submit proof that you have followed the process as part of the application. You have given explanations relating to the Notice to Leave but have not provided proof that a valid Notice was issued and on which date. You must do this or your application cannot be accepted.

You state that there is no tenancy agreement as it "has run out". If there is no tenancy, you cannot apply to the tribunal.

The statutory process can be difficult to follow and you should consider taking professional advice. You may wish to withdraw your application meantime.

8. The applicant sent a response to the Tribunal on 9 August 2024 as follows:

This is a copy of the different notice to leave paperwork given to Donna Kerr and the signature and date of each, I have also enclosed a copy of the original letter we gave to Donna Kerr back in November.

The applicant sent a copy of a portion of a notice to leave. Pages 1 and 5 were attached. Pages 2, 3 and 4 were missing. There were no details of the grounds of eviction and no details were given regarding service of the notice to leave.

9. Rule 8(1)(c) of the Tribunal Rules requires the President to reject an application if they have good reason to believe it would not be appropriate to accept it. I consider I have good reason to believe it would not be appropriate to accept this application. The application is incomplete as no valid notice to leave has been provided and no evidence of service of the notice to leave has been provided. No tenancy agreement has been provided. Further, the applicant has failed to respond appropriately to two reasonable requests by the Tribunal for further information. The applicant has therefore failed to cooperate with the Tribunal in the execution of its duties. It is open to the applicant to make a new 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