



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/24/2762

Parties

Brian Lynn, Jacqueline Lynn (Applicant)
Kara McGaughey (Respondent)

Flat 0/2, 42 Sandaig Road, Barlanark, Glasgow, G33 4TF (the Property)

1. By application received by the Tribunal on 18 June 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. The application was incomplete. The Tribunal wrote to the Applicants by email on 18 June 2024 requesting evidence to show that the eviction ground had been met. The Applicants did not respond.
3. The application was then considered by a Legal Member of the Tribunal with delegated powers of the Chamber President. On 8 August 2024 the Tribunal wrote again to the Applicants by email in the following terms:-

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

1. *Please provide a copy of the tenancy agreement.*
2. *Please provide the further information initially requested by email dated 18 June 2024.*
3. *Please note the terms of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016. That section 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 (NTL) more than six months after the day on which the relevant notice period in that NTL expired.*
4. *The NTL which has been submitted to the tribunal indicates that the notice period expired on 21 November 2023. The application to the tribunal was lodged by means of an email dated 14th June 2024. The application has therefore apparently been lodged more than six months after the day on which the notice period in the NTL has expired. Please explain the basis upon which*

this application can proceed given the specific terms of section 55 or confirm that your wish to withdraw the application

The tribunal would suggest that you may find it useful to seek independent legal advice on this application, the matters contained in this letter and any further action which you wish to take.”

4. The Applicants responded by email on 20 August 2024. In response to the query regarding the Notice to Leave, the Applicants advised *“I was under the impression that I was unable to submit an application the first tier tribunal due to the rent and eviction freeze that was put in place by the Scottish government until March 2024. I suffer from extreme depression and anxiety and during the period of March until now, I wasn't mentally able to deal with this situation. I'm now only able to do so with the aid of my family and being in a better mental capacity. The tenant is fully aware of my position and my intentions of selling the property. Any withdrawal to the application will have a massive impact on my mental health and I plead that you accept my proposed application.”*
5. 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”.
6. I consider that this application is frivolous and has no reasonable prospect of success in its current form. The Applicants seek an eviction order under section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). They have provided a notice to leave which states that the date upon which they can commence proceedings before the Tribunal is 21st November 2023 (“the effective date”).
7. 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 Applicants submitted their application to the Tribunal on 14th June 2024. In terms of the notice to leave served upon the Respondent the deadline for making an application to the Tribunal under section 55 of the Act would have been 21st May 2024.
8. The Applicant has cited ill health as a reasonable ground for the delay in raising proceedings, as well as a misapprehension that they were unable to apply to the Tribunal until after the eviction ban had expired. Whilst I do have sympathy with the Applicants’ position, there is no discretion for the Tribunal within the provisions of the 2016 Act that would permit acceptance of an application in breach of section 55 and the Applicants have been unable to identify any legal basis upon which the application can proceed.

9. Accordingly, I concluded that the application is bound to fail as it has not been made timeously 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
26 September 2024