

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8(1)(a) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/24/4440

Parties

Corgi Partners Ltd (Applicant)
Corbett and Shields (Applicant’s Representative)
Charles McHaffie (Respondent)

Flat 2/2, 12 Springhill Road, Port Glasgow, PA14 5QP (the Property)

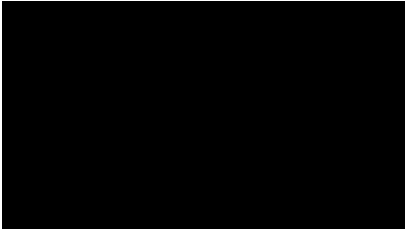
1. By application received by the Tribunal on 12 December 2023 the Applicant sought an eviction order against the Respondent under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
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’s representative on 17 January 2024 requesting, amongst other information, evidence of service of the notice to leave. Following a number of reminders to the Applicant’s representative the Tribunal received an email from them dated 18 June 2024 with a recorded delivery postal receipt and tracking information.
3. On 23 July 2024 the Tribunal emailed the Applicant’s representative noting that they had provided a postal receipt dated 1st August 2023, yet the notice to leave was dated 25th August 2023, and the receipt did not pertain to the property address. The Tribunal again requested evidence of service of the notice to leave, stating that if the Applicant was unable to provide this they would have to withdraw the application or make representations on why the application should be accepted.
4. On 30 July 2024 the Applicant’s representative emailed the Tribunal stating “*I have a new Notice to Leave sent and will provide the postal confirmation*”. On 27 August 2024 the Tribunal responded to the Applicant’s representative asking for confirmation that the application could be withdrawn on the basis that a new notice to leave had been sent to the Respondent. On 29 August 2024 the Applicant’s representative responded to the Tribunal with a copy of the new notice to leave. The Tribunal subsequently emailed the Applicant’s representative in the following terms:-

“Thank you for submitting the new Notice to Leave. You will appreciate that you cannot proceed with an application from October 2023 based on a Notice to Leave issued in August 2024, similarly that your s 11 is not applicable to a new Notice to Leave. It would also be confusing for the Respondent to continue with a 2023 case number for a new application. Please withdraw this case and lodge a fresh application based on the up to date Notice to Leave and a new S 11 notice and provide with that application all the necessary documents. Please confirm in writing that this application is withdrawn.”

5. No further response was received from the Applicant’s representative.
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 2016 Act. In terms of section 52(3) of the 2016 Act the Tribunal cannot entertain the application in the absence of a notice to leave that has been given to the tenant prior to the raising of the application. The notice to leave that the Applicant now wishes to rely upon was sent to the tenant after the application was submitted to the Tribunal.
8. Despite repeated requests the Applicant’s representative has not withdrawn this application. The application cannot comply with the requirements of section 52(3) of the 2016 Act for the reasons outlined in this decision. The application is therefore futile and falls to be rejected. The Applicant should instead submit a fresh application to the Tribunal on the basis of the new notice to leave.

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, Legal Member
9 November 2024