



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 application by Mrs Isabella Sutherland, Applicant

Ms Suzanne Cassell, Respondent.

In terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/24/4047

At Glasgow on the 4 November 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) a) and (c) of the Rules

1. This is an Application by Mrs Isabella Sutherland for eviction in terms of rule 109 of the Rules. The Application was made on 21 August 2024.
2. The in-house convenor reviewed the application and the tribunal wrote to the Applicant on 25 September 2024 seeking further information as follows:

It appears that the tenancy you have in place is a private residential tenancy. Private residential tenancies are governed by the Private Housing (Tenancies) (Scotland) Act 2016.

In terms of section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal cannot consider an application for an eviction order for a private residential tenancy unless the application is accompanied by a notice to leave. You have provided a copy of a letter dated 2 August 2024 that was sent to the tenant intimating that you were giving her two months notice. However a notice to leave must be in a specific form which is prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and must comply with section 62 of the 2016 Act.

In the absence of a valid notice to leave, it is likely therefore that your application will be rejected in its current form unless you are able to provide the following information:-

- A copy of a notice to leave that has been sent to the tenant together with proof that it was sent, e.g. postal slip or sheriff officers certificate of service;
- A copy of the notice under section 11 of the Homelessness etc (Scotland) Act 2003 which requires to be sent to the local authority together with proof that it was sent;

- Evidence to support the ground relied upon in the application. For an application under ground 1 this may include any correspondence you have had with estate agents regarding the sale of the property, or a home report.

- It is also noted that the property is owned by both yourself and Mark Sutherland. Please confirm if Mr Sutherland is to be added as a joint applicant and provide his contact details. Alternatively please provide written consent from Mr Sutherland confirming that he is content for the application to proceed in your sole name.

Please provide a response no later than 9 October 2024. Upon receipt of your response a Legal Member may seek further information from you before a decision is made on whether your application can be accepted. Alternatively please confirm if you wish to withdraw the application and submit a further application to the Tribunal in due course. It may benefit you to seek advice from a solicitor or advice agency regarding your application if you require further guidance prior to providing a response. The Tribunal cannot provide you with legal advice but you can find details of advice agencies under the Useful Links section on the Tribunal's website at housingandpropertychamber.scot. Please reply to this office with the necessary information by 9 October 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. The Applicant responded on 26 September 2024 by sending a further copy of a letter she sent to the Respondent. No further documentation was received. The Applicant did not address the remaining matters raised in the tribunal's letter of 25 September 2024.
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"***.
5. "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 or vexatious and has no reasonable prospect of success. No notice to leave has been provided and without a valid notice to leave, the application cannot succeed.
7. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is incomplete and the Applicant has failed to respond to the tribunal's reasonable request for information of 25 September 2024. .

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