



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 Mark McGrath in terms of rule 109 of the Rules.

Respondents: Hollie McPhee and Luke McPhee

Case reference FTS/HPC/EV/24/1992

At Glasgow on the 13 January 2025, 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 Mr Mark McGrath, the owner of the property at 69 Carberry Court Whitecraig Edinburgh EH21 8PJ, (‘the property’) for eviction in terms of rule 109 of the Rules. The application was dated 1 May 2024.
2. The in-house convenor reviewed the application and the Tribunal wrote to the Applicant on 21 May 2024 seeking further information as follows:

A Legal Member of the Tribunal with delegated powers of the President has considered your application. Please provide the following

- (1) An amended application that includes the joint tenant and his contact details if he no longer lives at the property. The application must be made against all tenants.
- (2) Evidence of service of the notice to leave on both tenants.
- (3) A copy of the section 11 notice with evidence that it was sent to the Council.
- (4) Evidence of the intention to sell such as a copy of the contract with the selling agent Please note that copies of all documents will be given to the Respondents. You may wish to replace the mortgage information submitted with redacted versions Please respond within 14 days or your application may be rejected. Please

reply to this office with the necessary information by 4 June 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. The applicant replied on 4 June 2024 by providing an amended application, the section 11 notice, evidence of intention to sell the property, and a copy of a notice to leave.
4. The in-house convener reviewed the application and the Tribunal sent a further email on 20 June 2024 as follows:
 - (1) You have submitted a second Notice to leave which has completely different dates to the Notice originally lodged. Please provide a copy of the Notice which was given to the respondents and upon which you intend to rely in this application.. Please also provide evidence of service. This should show when and how the notice was served. If it was hand delivered you should provide a statement to confirm the position.
 - (2) Please note that the Notice dated 20 April would appear to be as it does not give 84 days notice. Please clarify the position. You may wish to take legal advice before you respond. Please respond within 14 days or your application may be rejected”

5. The applicant responded on 3 July 2024 stating he had wrongly assumed a new notice to leave was required.

6. The Tribunal sent a further email on 6 August 2024 as follows:

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

- You have submitted a further copy of the original notice to leave which appears to be dated 18 July 2023 and which states that the earliest date that proceedings can be raised is 1 February 2024. The letter from the Respondents states that they received this notice on 18 January 2023. If this should be 2024, the Respondents were only given 2 weeks notice instead of 84 days. The notice would therefore be invalid as the date in Part 4 is incorrect. However, if the Respondents received the notice in January 2023, it is not clear how the notice can be valid as an excessive notice period would have been given and the notice is dated 6 months after it was received.
- Please clarify the position. You may wish to take legal advice before you respond, Please reply to this office with the necessary information by 20 August 2024. If we do not hear from you within this time, the President may decide to reject the application.

7. The applicant wrote to the Tribunal on 12 August 2024 and stated that there was an error in the notice to leave and that it was dated 18 July 2023 rather than 18 January 2023.

8. The Tribunal sent a further request for information on 9 September 2024 as follows:

You have submitted a notice to leave which is dated 18 July 2023 together with a letter from the Respondents which states that you gave them the notice on 18 July 2023. The date specified in Part 4 is 1 February 2024. This date is incorrect because the correct period of notice is 84 days and not six and a half months. The date should be 11 October 2023. Although the Tribunal would generally accept a notice which gives more notice

than is required, the effect of the error in this case is that the application has been lodged outwith the 6 month period specified by Section 55 of the Act. The application should have been lodged no later than 11 April 2024. It was lodged on 1 May 2024. Please clarify why you consider that the Tribunal can accept the application. You may wish to take legal advice before you respond. Please respond within 14 days or your application may be rejected.

9. In the applicant's response of 9 September 2024 he appeared to be seeking legal advice from the Tribunal as to how to proceed. The Tribunal wrote on 9 October 2024 seeking a substantive response and explaining that the Tribunal cannot provide legal advice.
10. The Tribunal sent a reminder on 27 November 2024. No reply has been received.
11. 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*'.
12. "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".
13. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. Section 55 of the Private Housing (Tenancies)(Scotland) Act 2016 provides that a landlord may not make an application to the Tribunal against a tenant using a notice to leave more than six months after the expiry of the notice period in the notice to leave. It appears the notice to leave provided is time barred as the application has been lodged more than six months after the expiry of the notice to leave.
14. 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 the Applicant has failed to cooperate with the Tribunal in the execution of its duties.

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.

L.Ward

Legal Member