



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 Mr Michael Payne in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/24/5271

Respondent Alexander John Fyfe and Lisa Fyfe.

At Glasgow on the 30 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 Michael Payne for eviction in terms of rule 109. The application was dated 14 November 2024 and was added to the case management system of the Tribunal Chamber on 15 November 2024.
2. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 16 December 2024 seeking further information as follows:

A legal member of the Tribunal has reviewed your application. Before a decision can be made on whether the application can proceed to the next stage we require you to provide the following information:-

- The notice to leave states that an application will not be submitted to the Tribunal any earlier than 30 April 2024. In terms of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 a landlord may not make an application to the Tribunal for an eviction order using a copy of a notice to leave more than six months after the notice period has expired. It appears therefore that the deadline for making an application to the Tribunal based on the notice to leave you have produced was 30 October 2024. Your application was received on 14 November 2024. Can you please explain the legal basis upon which you believe the Tribunal can entertain the application.

- Please provide proof that the notice to leave was delivered to the tenants, e.g. covering email or postal delivery slip and tracking information.

You may wish to seek advice from a solicitor or advice agency before providing your response. Please note the Tribunal cannot provide you with advice but there are details of advice agencies available under the Useful Links section of the Tribunal website. Please reply to this office with the necessary information by 30 December 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. The applicant responded on 20 December 2024 as follows:

Further to your email of 16 December, you have asked for the following necessary information.

1. Explain basis for tribunal to entertain application – [detailed below].
2. Proof that Notice to Leave was delivered – already included in my application, page 13, covering email (copy attached). With regards to point 1 above; page 14 of my application details the extension of the Notice Period granted at the bequest of my tenants to 31/07/24. If this extension is valid, my application to the tribunal is within the 6 months period. If this extension is not valid even though it was granted by myself in good faith, then based on the date the original Notice to Leave was sent, I have exceeded the 9 month period by 14 days. I do not feel it to be reasonable that I should be denied award of a mandatory ground for eviction under these circumstances. Nor do I believe my tenants wish further delays in the process. They have been living in a state of limbo for the last 10 months. Half their belongings are in boxes and half the house has empty rooms. The family wish to move on with their lives but cannot obtain housing without this necessary eviction order. Consequently I ask the Chamber President under section 52(4) of the Act to allow my application to proceed to the next stage where the tenants, Alex & Lisa Fyfe and their family can be asked if they wish to be evicted without further delay. I believe they will say yes. I look forward to the correct decision for all parties involved.

4. This application has been made more than 6 months after the end of the notice period set out in the notice to leave. The notice to leave states that an application will not be submitted before 30 April 2024. An application should therefore have been made by 30 October 2024. The applicant has provided a copy of a letter that he sent to the Respondent on 17 March 2024. That letter states that the Applicant has considered their request to stay in the property a further period of three months and that the “new date for the end of the notice period is now 31 July 2024”. In his email of 20 December 2024 the applicant is submitting that, if this extension is valid, the application has been made within 6 months of 31 July 2024. He also submits that if this ‘extension’ is not valid, the application is only 14 days late.

5. Section 55 of the Act provides:

55 Restriction on applying 6 months after the notice period expires

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2) In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

6. Section 52 of the Act provides:

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord’s application in accordance with subsection (3), or

(b) has been included with the Tribunal’s permission in the landlord’s application as a stated basis on which an eviction order is sought.

7. An application cannot proceed without a valid notice to leave. The notice to leave here is dated 1 February 2024. The letter dated 17 March 2024 is not a notice to leave. The parties may have agreed that the tenancy will come to an end on a later date but the letter sent by the Applicant is not a notice to leave and cannot form the foundation of an eviction application. The notice to leave provided states that an application will not be made before 30 April 2024. More than 6 months have elapsed since the notice to leave expired. It is therefore not possible for the tribunal to entertain the application. There is no discretion. The applicant is referred to page 318 and 319 of ‘Evictions in Scotland’ By Stalker in this regard.

8. 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”***.

9. "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".
10. I consider that this application is misconceived and has no reasonable prospect of success. The application is time barred.
11. 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 time barred and the tribunal has no discretion to extend the time limit in terms of s55 of the Act.

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