

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/3126

Parties

Asma Hussain, Khalid Hussain (Applicant)
Margaret Anne Girvan (Respondent)

3 Carribber Avenue, Whitecross, Linlithgow, EH49 6JS (“the Property”)

Tribunal Member: Ruth O’Hare (Legal Member) with delegated powers from the Chamber President

Decision

The Tribunal rejects the application by the Applicant received by it on 9 July 2024 under Rule 8(1)(a) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

Background

1. The Applicant applied to the Tribunal for an eviction order 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 (“the 2016 Act”). The Applicant relied upon ground 1 of paragraph 3 of the 2016 Act.
2. On 9 August 2024 the Tribunal wrote to the Applicant seeking further information. In particular the Tribunal requested a copy of the tenancy agreement, clarification as to the identify of the landlords, evidence of service of the notice to leave, evidence of service of the section 11 notice, and evidence that the eviction ground had been met.
3. On 10 September 2024 the Tribunal received an email from the Applicant with a screenshot of the notice to leave and a copy of an email from a debt agency.
4. On 18 September 2024 the Tribunal wrote to the Applicant noting that they had not provided a full response to the request for information. The Tribunal requested the documents outlined in its previous email of 9 August 2024 and encouraged the Applicant to take legal advice if he required guidance on how to proceed with his application.

5. The Applicant did not respond. On 1 November 2024 the Tribunal wrote again to the Applicant requesting the information, failing which the application would likely be rejected.
6. On 14 November 2024 the Applicant emailed the Tribunal with screenshots of two pages of the tenancy agreement and the notice to leave. The Applicant pointed out that the Respondent had signed the notice to leave acknowledging receipt. The Applicant explained that he required the property back so that he could sell it to his son. The Respondent was seeking alternative accommodation.
7. On 12 December 2024 the Tribunal wrote to the Applicant advising that they had not given the correct period of notice in the notice to leave for an application under ground 1. It appeared therefore that the notice to leave was invalid and the application could not be accepted. The Tribunal also pointed out that the Applicant had provided information that suggested ground 1 was not met as they were not intending on selling the property on the open market. The Applicant was again encouraged to seek advice regarding their application and was asked to confirm that the application could be treated as withdrawn. The Applicant was asked to respond no later than 26 December 2024.
8. On 22 December 2024 the Applicant emailed the Tribunal noting that "*the form has been filled in incorrectly*" and that they would "*need to redo the form again*". The Applicant asked the Tribunal for advice. The Tribunal responded to explain that it could not provide the Applicant with advice but there were details of advice agencies on the Tribunal's website.
9. No further response was received from the Applicant.

Reasons for Decision

10. 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".
11. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form. The notice to leave that has been produced by the Applicant does not provide the Respondent with the required notice under section 54(2) of the Private Housing Tenancies (Scotland) Act 2016. The notice to leave is therefore fundamentally defective. Accordingly I do not believe the Tribunal can competently entertain the application. The Applicant has been asked if they wish to withdraw the application but have failed to confirm their intentions in this regard. Accordingly I can see no option other than to reject the application under Rule 8(1)(a).

12. It is open to the Applicant to make a new application following service of a valid notice to leave. The Tribunal would encourage the Applicant to take independent legal advice going forward to ensure they comply with the statutory requirements for an application under rule 109.

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.

R O'Hare

Ruth O'Hare, Legal Member

28 January 2025