



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/EV/24/2808

37 Blink O'Forth, Prestonpans, EH32 9GA ("the Property")

Parties:

David Wilson ("Applicant")

Maria Siggins ("Respondent")

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 18 June 2024 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").

Background

- 1 The Applicant submitted an application under rule 65 of the Rules seeking an eviction order against the Respondent.
- 2 Following review of the application by a Legal Member of the Tribunal, the Tribunal wrote to the Applicant requesting further information regarding the application. In particular the Tribunal noted that the tenancy had been in place since 2012 and there was no tenancy agreement available. The Tribunal noted that the Applicant had provided a notice to leave which applied to private residential tenancies, and if the tenancy began in 2012 it was unlikely to be a private residential tenancy. The Tribunal explained that it may instead be the case that the tenancy in place was an assured tenancy, and the process for terminating assured tenancies was set out in the Housing (Scotland) Act 1988. The Tribunal encouraged the Applicant to seek legal advice regarding his application and asked him to provide a response no later than 20 August 2024.
- 3 On 21 August 2024 the Applicant emailed the Tribunal to confirm that the tenancy had been in place since 2012 and there was no tenancy agreement available. The Applicant provided a "notice to leave letter" that had been sent to the Respondent. He advised that he was unsure of what notice to use and had sought legal advice.

- 4 On 3 October 2024 the Tribunal wrote again to the Applicant. It noted that the Applicant had not fully dealt with the matters raised in the previous request for information. The Tribunal again explained that it appeared the notice to leave was not in the correct form as the tenancy did not appear to be a private residential tenancy. If the tenancy began in 2012 it would be an assured tenancy and there was a different process for terminating assured tenancies which was contained within the Housing (Scotland) Act 1988. The Tribunal advised that it would give the Applicant another opportunity to seek legal advice before providing a response. The Applicant was asking to respond no later than 17 October 2024.
- 5 No response was received from the Applicant. On 29 November 2024 the Tribunal wrote again to the Applicant again noting the various issues relating to the competency of the application which required to be addressed before the application could proceed. The Applicant was advised that if he did not provide a response the application would be rejected.
- 6 No further response was received from the Applicant.

Reasons for Decision

- 7 The Legal Member considered the application in terms of the Rules and determined that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicant has failed to provide the information requested by the Tribunal under Rule 5(3) of the Rules which is necessary to meet the required manner for lodgement. The Tribunal has identified fundamental defects with the application which have not been addressed by the Applicant. He has been asked for a response on three occasions. He has been advised that in the absence of a response his application will be rejected. Accordingly the Legal Member has concluded that the application cannot be accepted in its current form and must be rejected under Rule 8(1)(c).

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: A party 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

Ruth O'Hare, Legal Member
7 February 2025