

**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/24/3952

**Parties**

**BR Homes Ltd (Applicant)**

**Flat 10, 700 Hillpark Drive, Glasgow, G43 2PU (“the Property”)**

**Tribunal Member: Ruth O’Hare, Legal Member, with delegated powers from the Chamber President**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) rejects the application by the Applicant received by it on 28 August 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. The Applicant submitted a notice to leave with the application dated 18 June 2024. The notice to leave included ground 1 of schedule 3 of the 2016 Act and stated that proceedings for possession would not be raised any earlier than 28 July 2024.
3. Following a review of the application by a Legal Member of the Tribunal the Tribunal wrote to the Applicant requesting the following information:-

*“1. The Notice to Leave has been served on the basis of Ground 1, being the landlord’s intention to sell the property. Please provide evidence to support the ground being relied upon.*

*2. You were asked to provide evidence of how the Notice to Leave was served on the tenant. You have provided a post office receipt. This does not show that*

*the Notice was received and signed for. Please provide evidence from the Royal Mail track and trace website showing that the Notice to Leave was signed for at the address.*

*3. The supporting evidence you have lodged relates to the issue of rent arrears. The Notice to Leave lodged does not seek to rely on the rent arrears ground. If you have also served a Notice to leave seeking to rely on the rent arrears ground, please provide a copy of same together with evidence of service on the tenant.*

*4. Please provide a copy of the section 11 notice to the local authority and evidence of service. This was not included in your email of 5 September 2024.”*

4. The Applicant's representative responded by email on 27 October 2024. He confirmed that the Applicant intended to sell the property, and attached a postal receipt for the notice to leave dated 16 July 2024 and rent arrears invoices.
5. On 28 November 2024 the Tribunal wrote again to the Applicant's representative by email in the following terms:-

*“Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member asks you to provide information as follows:*

*1. Please provide a copy of and proof of service of the section 11 Homelessness Notice on the local authority.*

*2. Please provide proof of service of the Notice to Leave on the tenant. You have only provided proof of posting.*

*3. As you are relying on Ground 1 please provide your comments on the validity of the Notice to Leave as it provides less than 84 days notice.*

*4. Please provide evidence in support of the Ground relied upon such as signed terms of engagement with a solicitor or estate agent.*

*Please provide the information requested within 14 days failing which your application may be rejected.”*

6. The Tribunal received no response. On 22 February 2025 the Tribunal wrote again to the Applicant's representative requesting he reply to the Tribunal's email of 28 November 2024 no later than 5 February 2025.
7. On 3 February 2025 the Tribunal received an email from the Applicant with a section 11 notice and proof of service, and a further copy of the notice to leave.
8. On 17 March 2025 the Tribunal wrote to both the Applicant and the Applicant's representative in the following terms:-

*"It is noted that, although you have provided a copy of the Section 11 Form and notification to the local authority, you have not responded to points 2, 3 and 4 of the request of 28 November 2024. In relation to point 2, please note that the Tribunal is looking for a copy of the 'track and trace' delivery receipt from Royal Mail, which matches up to the RD number attached to the covering letter to the Respondent in respect of the Notice to Leave.*

*Please respond within 14 days to allow the application to be further considered, otherwise it may be formally rejected."*

9. On 21 March 2025 the Tribunal received an email from the Applicant with a copy of the delivery receipt for the notice to leave confirming that it had been delivered on 17 July 2024.

### **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 does not comply with the relevant provisions of the 2016 Act and on that basis I do not believe that the Tribunal can competently entertain the application.
12. Section 52(3) of the 2016 Act states that "*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.*" The definition of what constitutes a notice to leave is contained with section 62 of the 2016 Act. In terms of section 62(1) a notice to leave for the purposes of the 2016 Act is a notice which:-  
  
*"(a) is in writing,*  
*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*  
*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*  
*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations."*
13. Section 54(1) of the 2016 Act provides that "*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 until the expiry of the relevant period in relation to that notice*". Section 52(2) provides that the relevant period in relation to a

notice to leave “*begins on the day the tenant receives the notice to leave from the landlord*” and “*expires on the day falling (i) 28 days after it begins if subsection (3) applies, (ii) 84 days after it begins if subsection (3) does not apply*”.

14. Section 52(3) applies if the tenant has been occupying the let property for not more than six months on the day the notice to leave is received, or if the only eviction ground stated in the notice to leave are grounds 10, 11, 12, 13, 14 or 15 of schedule 3 of the 2016 Act. The Applicant has included ground 1 in the notice to leave. The tenancy commenced on 3 October 2023 and the notice to leave was sent to the tenant on 18 June 2024. The tenant had therefore been occupying the property for more than 6 months at the time the notice to leave was served.
15. I can therefore conclude that the relevant period is 84 days. The Applicant sent the notice to leave to the tenant on 16 July 2024. The date stated in the notice to leave as the day on which proceedings for possession may begin is 28 July 2024. The notice to leave does not therefore comply with the requirements of sections 52(2) and 62(1) of the 2016 Act as it does not give the tenant the required notice.
16. The Tribunal cannot entertain an application for an eviction order without a notice to leave that complies with the provisions of the 2016 Act. The application is therefore futile and has no prospects of success. Accordingly I can see no option other than to reject the application under Rule 8(1)(a).
17. 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.

