



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 Craig McPherson in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/25/1078

At Glasgow on the 14 May 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) of the Rules

1. This is an application by Mr Craig McPherson , the owner of the property at 29 Burnside Place Irvine KA12 0UN, (‘the property’) for eviction in terms of rule 109 of the Rules. The application was made on his behalf by Miss Kim McKenzie of Homesure Portfolio Management. It was dated 11 March 2025 and received by the Tribunal on 13 March 2024.
2. The in-house convenor reviewed the application and the Tribunal wrote to the applicant’s representative on 4 April 2025 seeking further information as follows:
 - (1) The tenancy agreement states that this is a joint tenancy between Sharon and Simon McIntosh. Your application and Notice to Leave cite Sharon McIntosh, only. Please explain why Simon McIntosh has not been given Notice to Leave and is not cited in the application form. If relevant, please submit the documentation to terminate his interest in the tenancy.
 - (2) With regard to the Notice to Leave, the Ground stated is Ground 12, three consecutive months’ rent arrears. The tenancy agreement states that rent is payable monthly in advance. The evidence of rent arrears sent with the Notice to Leave is that the rent due on October, November and December is unpaid. This would appear to be two months of arrears and the current month. Please explain why you consider

the Ground met at the serving of the Notice to Leave. Please note that there is case law that unpaid current rent is not arrears.

- (3) The tenancy ledger which you have submitted shows the tenant to be Simon McIntosh and the rent to be £525.00. Please explain why this is or withdraw this and submit a correct rent statement.
- (4) The Tribunal cannot provide you with advice on how to proceed and can only point out what you must do to ensure that your application is compliant and can be accepted.

3. The applicant's representative responded on 16 April 2025 as follows:

- (1) Tenancy Agreement / Notice to Leave Simon McIntosh sadly passed away on 18 September 2024, and Sharon McIntosh is now the sole tenant. Please find attached a copy of the death certificate for your records. The Notice to Leave was therefore addressed to Sharon McIntosh only, as she remains the sole party to the tenancy.
- (2) Ground 12 - Rent Arrears I have attached an updated rent ledger which confirms that the rent account was in arrears by three full months at the time the Notice to Leave was served, and remains in excess of three months in arrears. The rent due on 6 October, 6 November, and 6 December was not paid, which constitutes three full months of unpaid rent at the time of service. As rent is due monthly in advance, these missed payments meet the requirements of Ground 12.
- (3) Tenancy Ledger Name and Rent Account The tenancy ledger referenced Simon McIntosh, as this was the name used on the standing order for rent payments prior to his passing. Regarding the rent amount, the increase from £475.00 to £525.00 per month took effect on 06 November 2024, following appropriate notice to the tenants, which was accepted at the time of service. This is reflected in the ledger. We are currently in receipt of monthly housing allowance payments of £375.00, along with managed arrears payments of £39.35. Additionally, a payment of £200.00 was made by the tenant on 31 March 2025.

Should the tenant continue to make regular payments sufficient to cover the full rent, in addition to a reasonable contribution toward the outstanding arrears, the landlord would be prepared to allow the tenancy to continue.

4. 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”***.
5. “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”.
6. I have reviewed this application today and I consider that it has no reasonable prospect of success as the notice to leave was issued prematurely. Ground 12 requires that rent arrears must be outstanding for a period of three consecutive months at the date of service of the notice to leave. If rent first fell due on 6 October 2024 and the notice to leave was served on 7 December 2024, that is only 2 months. This matter was dealt with by the Upper Tribunal in the case of Majjid –v-Gaffney [2019]UT 59. In that case a notice to leave was issued on 1 July 2019 which informed the tenant “you are in rent arrears of £1525 from rent due 30/4/19, 31/5/19 and 30/6/19”. The tribunal refused the application at the sift on the basis that if the tenants were first in arrears on

30 April 2019 they could not be in arrears for three months until 30 July 2019. The tribunal's view was upheld by the Upper Tribunal Judge who said " It...could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to the making of an application. Such an approach would be open to significant abuse". Applying that legal decision to this application, the three months could not be met until 6 January 2025. The notice to leave is therefore premature and cannot be relied upon for this eviction application.

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