



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 Joseph Sander in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/25/2744

At Glasgow on the 1 October 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 Joseph Sander, the owner of the property at 96 Backmuir Road Hamilton ML3 0PY(‘the property’) for eviction in terms of rule 109 of the Rules. The application was dated 24 June 2025 and received by the Tribunal on 25 June 2025.
2. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 22 July 2025 seeking further information as follows:

The rent appears to fall due on the 23rd of each month. It appears therefore that the arrears began to accrue on 23 February 2025. If that is the case, the rent account would not have been in three months consecutive arrears until 23 May 2025. The notice to leave was sent to the tenant on 16 May 2025. Ground 12 would not have been met on 16 May 2025. Please explain why you believe the notice to leave is valid.

3. The applicant did not respond.
4. The tribunal sent a further email on 26 August 2025 as follows:

A Legal Member of the Tribunal with delegated powers of the President has considered your application and notes that you have failed to respond to a request for information. As previously advised, it appears that the Respondent was not in arrears for three full months at the date of service of the Notice to leave. Having regard to the decision of the Upper Tribunal in the case of *Majid v Gaffney* 2019 UT 59, please clarify the basis upon which this application can be accepted. You may wish to take legal advice before you respond. Please respond within 14 days or your application is likely to be rejected.

5. The applicant responded on 8 September 2025 as follows:
NTL can be given. I bring to your attention the attachment in the original application "Louisa rent-increase.pdf", this stipulates that the rental increase will take effect on the 15th Feb 2025, the NTL was given as you have stipulated on the 16th May 2025. As such I believe the three month consecutive arrears criteria would have been met when the NTL was issued.
6. 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”***.
7. “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”.
8. 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 arrears began to accrue on 23 February 2025 and the notice to leave was served on 16 May 2025 that is only two full months. The three months would not have elapsed until after 23 May 2025. The applicant is suggesting that as the rent increase notice of 12 November 2024 states that it takes effect on 15 February 2025, the arrears accrued from that date. However, the tenancy agreement provides for rent to be paid in advance from the 23 February 2021. Rent is therefore due on the 23 of the month. Further, the rent statement provided has arrears accruing from 21 February 2025 and not 15 February 2025 (although it is not clear why 21 February 2025 was used rather than 23 February 2025). This matter was dealt with by the Upper Tribunal in the case of *Majid –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 sif 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 23 May 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