



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 Ewan Smith in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/0034

At Glasgow on the 16 June 2022, 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) and (c) of the Rules

1. This is an application by Mr Ewan Smith for eviction proceedings. The application was incomplete.
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 24 January 2022 seeking further information as follows:

Your application has been assessed by a Legal Member. The following further information or documentation is required:

- 1. You have stated in the application form that you are proceeding under Ground 8. In terms of the Private Housing (Tenancies) (Scotland) Act 2016, Ground 8 is applicable where a tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee. If you wish to raise the application under Ground 12 of the 2016 Act, please provide an amended page of the application form to reflect the correct position.*
- 2. Please provide evidence of service of the Notice to Leave on the Respondents.*
- 3. Please provide a Section 11 Notice as required by section 56 of the 2016 Act, together with evidence of service of the notice on the local authority.*
- 4. Please confirm whether you have complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and provide evidence of this, if possible. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant the order. Guidance and template letters can be found on the Scottish Government website.*

3. A further detailed request for information was sent by the tribunal on 8 March 2022 as follows:
- *If the tenant Brian Knowlayne is no longer residing at the property, please provide an up to date address for him, as one will be required for papers are to be served on him.*
 - *Please also amend the address of Brian Knowlayne on the application to his current address • Please amend the first name of Rose Knowlayne on the application, as it is noted that her name on the application form is “Rosnaizan”*
 - *Please amend section 5 of the application form, you have referred to ground 8 however it appears your application should be made under ground 12 if it is based on non-payment of rent for at least three months*
 - *The period in the notice to leave has not expired, and does not expire until 26 May 2022. Please either withdraw the application and re-apply when the notice period has expired or confirm that you wish to proceed with the application on the basis that you intend to ask the Tribunal to entertain the application although it is in breach of Section 54 (Section 52(4) of the Private Housing (Tenancies) (Scotland) Act 2016). A decision as to whether it is reasonable for the Tribunal to entertain the application will not be made at the application/sifting stage, but by the Tribunal that deals with the application if it is accepted. You will have to satisfy the Tribunal that it is reasonable to do so at the CMD or subsequent Hearing.*
 - *Please provide a copy of evidence of service for the notice to leave*
 - *Please provide a copy of the section 11 notice together with evidence of service*
 - *Please advise if you have complied with the pre-action requirements in terms of Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, and provide evidence of compliance?*
4. Reminders were sent by the tribunal on 12 April 2022 and 18 May 2022. The applicant has not responded.
5. 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”**.
6. “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”.
7. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as the essential information required for it to proceed has not been provided, despite two detailed request being sent by the tribunal and two reminders. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as it is incomplete and the applicant has failed to cooperate with the tribunal in the execution of its duties.
8. It is open for Mr Smith to resubmit the application with the correct supporting documentation.

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