



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 Hughes in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/2292

At Glasgow on the 11 September 2023, 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 Craig Hughes for eviction in terms of rule 109 of the Rules. The Application was made on 21 June 2023.
2. The Application was incomplete. The Applicant had sent a notice to quit and AT5 and a document which, although called an assured tenancy agreement, was dated 1 July 2019 (no new assured or short assured tenancy agreements could be constituted after 1 December 2017 in terms of section 12(1A) of the Housing (Scotland) Act 1988) and must therefore be a private residential tenancy agreement. The Tribunal wrote to the Applicant on 12 July 2023 as follows:

The following further information is required from you before your Application can proceed to the Chamber President for consideration:

- evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant
- a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act
- evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority Please reply to this office with the necessary information by 19 July 2023, otherwise the application may be rejected.

3. The Applicant responded on 12 July 2023 as follows:

I have attached screenshots of the correspondence as evidence, my mistake for not including with original correspondence. As I am representing myself this far I hope this is satisfactory. I served the notice to vacate in April, via a Whatsapp as that's how we communicate, I then delivered the 2 copies to him the following day. I have included that's whatsapp message along with an screenshot of an additional email I have resent tonight. I had not notified the Council with the Section 11 form, I have now and have also attached the screenshots as evidence along with the form. I noticed my Tenancy agreement was not the signed version so included that also.

4. The in-house convenor reviewed the Application and the Tribunal wrote to the Applicant on 10 August 2023 seeking further information as follows:

A Legal Member of the Tribunal with delegated powers of the President has considered your Application. You have submitted an assured tenancy agreement and a notice to Quit. However, as the tenancy appears to have started in 2019 it cannot be an assured tenancy and must be a private residential tenancy under the 2016 Act. If the Application is to proceed you must provide:

- (1) A Notice to Leave which complies with Section 62 of the 2016 Act. This should also be in the prescribed format.
- (2) Evidence of service of the notice to leave.
- (3) An amended application form which includes the joint tenant as the application must be made against both.
- (4) An address for the joint tenant if she no longer resides at the property.
- (5) Clarification of the relevant eviction grounds. Ground 8 applies when the tenant ceases to be an employee of the landlord, ground 11 is breach of tenancy, ground 12 relates to rent arrears and 13 applies when the tenant has been convicted of a criminal offence. Please confirm which grounds apply and amend the application form accordingly.
- (6) Please provide evidence to support all of the eviction grounds. For ground 12 a rent statement should be provided which shows the rent due, the payments made and the running total outstanding. The Cost of Living (Tenant Protection)(Scotland) Act 2022 applies to your application for eviction. Please see the attached guidance and respond accordingly. You may wish to take legal advice before you respond. Please reply to this office with the necessary information by 24 August 2023. If we do not hear from you within this time, the President may decide to reject the application.

5. The Applicant responded on 24 August 2023 stating he did not have an address for the joint tenant. He submitted a document purporting to be a notice to leave. This document is incomplete. It is dated 22 August 2023 and in the part which reads "An application will not be submitted to the Tribunal for an eviction order before " the Applicant has not put a date, but instead has put a row of x's. There is nothing to suggest the notice to leave has been served. Even if it has been served, the notice period has not been given. Even it has been served, any notice period given cannot have expired given it is dated 22 August 2023.
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 consider that this application is frivolous or vexatious and has no reasonable prospect of success. There is no valid notice to leave and the notice has not been served on either tenant. It is not a notice to leave in terms of section 62 of the Private Housing (Tenancies)(Scotland) Act 2016 ('the Act'). Further, I do not consider it is appropriate to entertain this application in terms of section 52 of the Act as there is no valid notice to leave before the Tribunal.

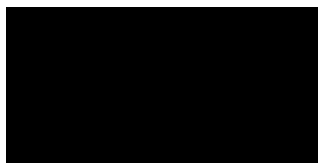
9. It is open to the Applicant to make a new Application once he has served his notices in the proper form.

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