



Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Chamber Ref: FTS/HPC/EV/22/3825

Re: 4 Arrothill Drive, Kilmarnock ("the Property")

Parties:

Maureen Park ("the Applicant")

Jessie Flemming ("the Respondent")

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 66 on 19th October 2023, with accompanying documents.
2. The application was considered by a legal member of the Tribunal and by letter dated 10th March 2023, the Applicant was informed that further information was required as follows:

Before a decision can be made, we need you to provide us with the following:

1. The title to the Property is in joint names. Please provide written consent from the joint owner for this matter to be pursued;

2. Please provide a copy of the section 11 Homelessness Notice along with proof of service on the local authority;

3. Please provide evidence that the Applicant intends to sell the Property such as terms of engagement with a solicitor or estate agent. Please reply to this office with the necessary information by 29 November 2022.

If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 16th November 2022, the Applicant representative replied as follows:

1 - The property will be in the name of Mr and Mrs Park, however Mr Park died a number of years ago (circa 10), do you require a death certificate this being the case?

2 - What is the section 11 Homelessness Notice? I have emailed the notice to quit documents over to Clair Gowrie at East Ayrshire Council?

3 - The flat will need extensive renovations carried out on it prior to sale but we will arrange for Grieg Residential to carry out a valuation meantime

4. The application was considered by a legal member of the Tribunal and by letter dated 1st December 2022, the following information was requested:

1. Please provide a copy of the death certificate relating to the joint proprietor.

2. Please consider the terms of Section 11 of the Homelessness Etc (Scotland) Act 2003. You may wish to consider taking legal advice or consult a housing advisory service or the local authority about what is required.

3. We note that you intend to obtain a valuation of the property. Please provide us with a copy of the valuation. Please note that in order to establish the ground of eviction, the Applicant will have to demonstrate that an intention to sell the property for market value, or market it for sale, within 3 months of the tenant ceasing to occupy it.

Please reply to this office with the necessary information by 15 December 2022. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

5. The application was considered by a legal member of the Tribunal and by letter dated 4th January 2023, a further opportunity was given to provide the outstanding information. No response was received.
6. The application was considered by a legal member of the Tribunal and by letter dated 7th February 2023, the following information was requested:

Please disregard the previous request for evidence of the intention to sell. This is not required as the application has been made in terms of Rule 66 – termination of a short assured tenancy. However, you may wish to provide this information in connection with the requirement to establish that it is reasonable to grant the eviction order. Please provide the following:

1. A copy of the death certificate for the joint owner.
2. A copy of the section 11 notice which has been sent to the Local Authority with evidence that it was sent. Please note that the application cannot be accepted without a copy of this notice as it is required in terms of the legislation and Tribunal rules. You may wish to contact the Local Authority for advice on the matter.

Please reply to this office with the necessary information by 21 February 2023. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

7. The application was considered by a legal member of the Tribunal and by letter dated 17th March 2023, a further opportunity was given to provide the outstanding information. No response was received.
8. The application was considered by a legal member of the Tribunal on 19th April 2023.

Reasons for Decision

9. The Tribunal considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

"Rejection of application

8.-(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if-

- (a) they consider that the application is frivolous or vexatious;*

(c) they have good reason to believe that it would not be appropriate to accept the application;

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

10. The Tribunal has requested further information from the Applicant in order to consider whether or not the application must be rejected. The Applicant has failed to respond in full to the Tribunal's request for further information and documents.
11. In particular, the Applicant has failed to provide the notice required by section 19A of the Housing (Scotland) Act 1988, which provides:

19A Requirement to notify local authority of proceedings for possession

- (1) Where a landlord raises proceedings for possession of a house let on an assured tenancy, the landlord shall give notice of the raising of the proceedings to the local authority in whose area the house is situated, unless the landlord is that local authority.
- (2) Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).

12. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 66 of the Procedure Rules and the requirements stated in the 1988 Act as set out above.
13. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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 first seek permission to appeal from the First-tier Tribunal. That party must

seek permission to appeal within 30 days of the date the decision was sent to them.

H Forbes

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Legal Member/Chair

— 19th April 2023
Date