

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Helen 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/22/0833

Parties:

Mr Paul Sloan ("the Applicant")

Ms Kelli Lynch ("the Respondent")

Re: 8 Woodside Place, Viewpark, Uddingston, Glasgow, G71 5HD ("the Property")

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 is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 109 on 22nd March 2022. The Applicant was seeking an order for eviction.
2. The application was considered by a legal member of the Tribunal and further information was requested by letter dated 8th April 2022, as follows, requesting a response by 22nd April 2022:

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

1. Please submit your application on the correct form - eviction proceedings are made on Form E.
2. Please ensure that section 5 of the application form states which ground of recovery you are relying on (Ground 1 - Landlord intends to sell).
3. Please ensure that you correctly spell names and addresses on the application form, as if the application is granted the names and addresses in the application form will be used in any formal legal order.
4. Please provide landlord registration details.
5. Please provide a copy of the tenancy agreement.
6. Please provide a copy of the notice to leave together with evidence of service.
7. Please provide a copy of the section 11 notice together with evidence of service. Supported by the Scottish Courts and Tribunals Service www.scotcourtsribunals.gov.uk
8. Please provide evidence of the ground that you are relying on, the Private Housing (Tenancies) (Scotland) Act 2016 suggests that for intention to sell applications suitable evidence could be:

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market. You may wish to take legal advice on the requirements for bringing an application for eviction.

3. No response was received.
4. The application was considered by a legal member of the Tribunal on 13th May 2022. A further letter dated 16th May 2022 was sent to the Applicant requesting the outstanding information by 6th June 2022. No response was received.
5. The application was considered by a legal member of the Tribunal on 16th June 2022.

Reasons for Decision

6. 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."

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. In the absence of the requested information from the Applicant, the application cannot proceed.
9. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. 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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16th June 2022

Legal Member/Chair

Date