



**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 Peter Brody of Braemara Ltd in terms of Rule 65 of the Rules.

**Case reference FTS/HPC/EV/19/2886**

At Glasgow on the 11 October 2019, 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 Peter Brody of Braemara Ltd for recovery of possession of the property at Flat 5 Naver House Naver Road Thurso KW14 7QA in terms of Rule 65. The application was dated 12 September 2019 and received by the Tribunal Administration on 16 September 2019.
2. The application was accompanied by the following:-
  1. AT6 dated 9 September 2019.
  2. Lease
  3. AT5
3. The tribunal wrote to the applicant’s representative on 16 September 2019 requesting evidence that the possession ground or grounds have been met and a copy of the notice given to the local authority in terms of section 11 of the Homelessness (Scotland) Act 2003.
4. The applicant responded by providing further information regarding the rent arrears and the s11 notice. No rent statement has been produced and it is not clear to me that the minimum requirements of rule 65 have been met. Further no proof of service of the AT6 has been lodged.

5. There are serious problems with this application which in my view cannot be resolved by the Tribunal making a request for further information. The application seeks an order for possession on the basis of ground 8 of schedule 5 of the Housing (Scotland) Act 1988, 'the Act'. In terms of s19(4) of the Act the period of notice for an application on that ground is 14 days. The AT6 lodged is dated 9 September 2019 and it states that proceedings will not be raised before 24 September 2019. The application, ie the 'proceedings' have been raised with the tribunal on 16 September 2019. They have been raised 8 days before the expiry of the notice period. The AT6 cannot therefore be relied upon for these proceedings. I refer to 'Stalker' on Evictions at page 79 which provides:

***If the only ground, or one of the grounds, is, 1,2,5,6,7,9 or 17 of schedule 5, the period of notice is after which proceedings may be raised by the landlord is two months; otherwise the period is two weeks. This does not mean that proceedings cannot be raised by the landlord within the notice period. It means that the notice would be invalid for the purposes of those proceedings. In that case the landlord would have to ask the court to dispense with the requirement to serve the notice in terms of section 19(1)(b).***

6. Given this is a ground 8 application the tribunal has no power to dispense with the notice period in terms of s19(5) of the Act.
7. 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"***.
8. "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".
9. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above.
10. 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. Even if the items missing from the application were requested and provided the AT6 has been rendered invalid by the application being made before the expiry of the notice period.

**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