



**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 Miss Julie Clamp in terms of rule 109 of the Rules.

**Case reference FTS/HPC/EV/22/0112**

At Glasgow on the 5 September 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 Miss Julie Clamp for eviction in terms of rule 109. The applicant was initially represented by Mr Craig Johnson of 2/10 Muirhouse View Edinburgh. There was a change of representative and the applicant’s solicitors Complete Clarity Solicitors wrote to the Chamber on 18 August 2022 indicating that they were instructed. The application was dated 16 December 2021 and was added to the case management system of the Tribunal Chamber on 17 January 2022.
2. I have reviewed the application today. It has a lengthy history and it has been reviewed by the in-house convenor on 10 February 2022, 14 March 2022, 19 April 2022, 7 June 2022, and 26 July 2022. In that time the Chamber have requested further information and issued reminders. The most recent substantive request for information was sent on 26 July 2022 as follows:
  - *Please clarify the spelling of the Respondent’s name as you have used Oztaz and Oztas.*
  - *The amended section of the form refers to ground 8. As previously advised, the rent arrears ground is ground 12. Please provide an amended form which specifies the correct ground.*
  - *As previously requested, please explain how the Notice to leave was given to the Respondent and provide evidence of this.*
  - *As previously requested, please provide evidence that the section 11 notice was sent to the Local Authority. Please reply to this office with the necessary information by 2 August 2022. If we do not hear from you within this time, the President may decide to reject the application.*

3. The applicant responded on 3 August 2022 requesting more time and indicating that she felt she needed more professional help to assist with the application. The applicant also gave details of her personal circumstances which may have impacted on her ability to deal with matters. No substantive response has been received however the applicant instructed solicitors and they contacted the Chamber on 18 August 2022 requesting a copy of the tribunal's most recent requires for information. A copy of the Chamber letter of 26 July 2022 was sent to Complete Clarity Solicitors on 24 August 2022.
4. Upon reviewing the application today I note that the solicitors have not responded to the request for further information. The usual tribunal procedure would be for the inhouse convenor to write to the applicant's solicitor with a reminder. It is not open for me to do that as in my view the application is time barred.
5. The notice to leave lodged is dated 18 June 2021 and it states that an application for eviction will be made to the tribunal no earlier than 19 December 2021. The application is dated 16 December 2021 and was received on the case management system on 17 January 2022. However, an application is 'made' in terms of rule 5 of the rules if it is lodged in the manner set out in the rules. This application has not been lodged in accordance with rules 109 and 5 as things currently stand and is not yet 'made'.
6. Section 55 of the Act provides:

**55 Restriction on applying 6 months after the notice period expires**

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2) In subsection (1), "the relevant period" has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

7. Section 52 of the Act provides:

**52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a)subsection (3), or

(b)any of sections 54 to 56 (but see subsection (4)).

(3)An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4)Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5)The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a)is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b)has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

**8.** More than 6 months have elapsed since the notice to leave expired. It is therefore not possible for the tribunal to entertain the application. There is no discretion. The applicant is referred to page 318 and 319 of 'Evictions in Scotland' By Stalker in this regard.

**9.** 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"***.

**10.** "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".

**11.** I consider that this application is misconceived and has no reasonable prospect of success. The application is incomplete and cannot be accepted in its current form.

**12.** 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 time barred and the tribunal has no discretion to extend the time limit in terms of s55 of the Act.

**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