



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 Mrs Johanne Milne in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/0149

At Glasgow on the 23 June 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 Mrs Johanne Milne for eviction proceedings. The application was made on her behalf by Ms Meaghan McDiarmid of Hovepark Lettings Ltd.
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant’s representative on 3 February 2022 seeking further information as follows:

The property appears to be owned by the applicant and Simon Milne.

- 1. Please provide written consent from the joint owner confirming that the applicant was authorised by to act as the sole landlord and to raise these proceeding in their sole name.*
- 2. Please provide evidence of the landlord registration as neither the number provided nor the address achieved positive identification of the landlord on the register.*
- 3. Please explain why the Notice to Leave was sent recorded delivery although the contractual agreement of the parties was that any notice would be sent by email? Why should service other than in the agreed form be acceptable? Please note that unless the above is provided the Tribunal my reject the application.*

3. The applicant's representative did not respond and a reminder was sent by the tribunal on 3 March 2022.
4. The applicant's representative responded on 14 March 2022 providing a mandate from the second owner authorising her to act in the application. She stated that she would check the position regarding the landlord registration and revert to the tribunal. No further documentation was received.
5. A further detailed request for information was sent by the tribunal on 8 April 2022 as follows:
 - *Please now provide evidence of the landlord registration*
 - *You have provided authorisation of the agent by Mr Simon Milne. However, what the Tribunal had asked for was written confirmation from Mr Simon Milne that the applicant had been authorised to act as sole landlord and that he was content for her to be making the application in her sole name. Please provide this now*
 - *You have not addressed the issue of service of the Notice to Leave in your reply. Please do so now*
6. No reply was received. A reminder were sent by the tribunal on 24 May 2022. The applicant's representative has not responded.
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 as the essential information required for it to proceed has not been provided, despite two detailed request being sent by the tribunal and two reminders. 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 incomplete and the applicant has failed to cooperate with the tribunal in the execution of its duties.
10. It is open for Mrs Milne to resubmit the application with the correct supporting documentation.

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 Ann Ward

Lesley Anne Ward

Legal Member