



**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 David Farley in terms of rule 65 of the Rules.

**Case reference FTS/HPC/EV/23/0664**

At Glasgow on the 14 August 2023, 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 David Fairley for eviction in terms of rule 65 of the Rules. The Application was made on 3 March 2023. There was a second application for rent arrears in terms of rule 70.
2. The application was incomplete and the tribunal wrote to the applicant on 3 March 2023 as follows:

We acknowledge receipt of your application to the First-tier Tribunal for Scotland (Housing and Property Chamber). The reference number allocated to your case is FTS/HPC/EV/23/0664. Please quote this reference number every time you contact us. This will help us process your case as quickly as possible. The following further information is required from you before your application can proceed to the Chamber President for consideration:

Must be accompanied by:

- A copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”)
  - Evidence of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (“AT6”) being served by the landlord on the tenant
- A copy of the notice to quit served by the landlord on the tenant (if applicable)
- Evidence of the notice to quit being served by the landlord on the tenant (if applicable)
- Evidence tending to show that the possession ground or grounds has been met Supported by the Scottish Courts and Tribunals Service [www.scotcourtribunals.gov.uk](http://www.scotcourtribunals.gov.uk)

- A copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable)
  - Evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority Please reply to this office with the necessary information by 10 March 2023, otherwise the application may be rejected.
3. The applicant responded on 7 March 2023 by stating that he did not have the required information. He also provided a copy of a case management discussion note relating to a claim by the applicant against his letting agent.
  4. The in-house convenor reviewed the application and the tribunal wrote to the applicant on 31 March 2023 seeking further information as follows:

The Tribunal has received the information contained in your email of 7 March 2023. Unfortunately the Tribunal can only deal with applications which are made in accordance with the requirements stated in the Rules of Procedure and the legislation relevant to the type of application. Thus you will have to provide the necessary documents for the type of application you are making. In order for the Tribunal to be able to process your application further please provide the undernoted information /documentation:

- (1) You do need to provide the tenancy agreement or at least if you are not able to do this as much relevant information (start date, initial term, notice period, whether agreement on continuation after initial period, parties, property, rent agreed, payment date for rent, deposit etc) as you are able. There is a tenancy agreement provided with the application but this seems to not be with an individual but with a company named Corozal Investments. This is not the tenant you are raising proceedings against and it is not clear how the tenancy you did submit can be a Short Assured Tenancy for which the Tribunal would have jurisdiction as it does not appear to be a tenancy in terms of s 12 of the Housing (Scotland) Act 1988. S 12 states that in order to be an assured tenancy, at least one of the tenants has to be an individual. Can you please clarify the relevance of the tenancy agreement lodged and whether "Corozal Investments" are an individual? Is this actually the Supported by the Scottish Courts and Tribunals Service [www.scotcourtsribunals.gov.uk](http://www.scotcourtsribunals.gov.uk) tenancy you are relying on? If it is, who is Charlene Angela McGrath and who did she rent the property from – yourself of Corozal Investment?
- (2). If you are making an application under rule 65 you must provide the AT6 document, Notice to Quit and S 11 notice to the local authority together with evidence of how all these documents were served on the tenant or the local authority respectively. Without this the Tribunal cannot deal with the application. You are strongly advised to seek legal advice on the matter as this seems to be rather complicated by the issue of your letting agent seemingly not assisting you in this process. You can find some links to advice bodies on the Tribunal's website under the "useful links" area.
- (3). You would also have to state which ground you are relying on for the application and provide evidence that this ground applies, such as a rent statement. If you are relying on the ground of rent arrears you would also be expected to show how you have complied with the pre-action requirements.
- (4). As you are raising an application at this point in time, please also note the attached letter about the Cost of Living Crisis legislation. Please consider the information on the attached letter regarding The Cost of Living (Protection for Tenants) (Scotland) Act 2022 and provide a reply with your position on the matter.
- (5). You have lodged unredacted mortgage / bank statements. Should the case proceed these would be crossed over to the Respondent. Please either advise that you wish to withdraw the statements and provide redacted

statements or confirm the unredacted statements can be used. Please note that without the necessary documents to meet the lodging requirements for an application the Tribunal would likely have to reject the application.

5. No response was received. The tribunal sent a reminder on 2 June 2023.
6. The applicant responded on 5 June 2023 as follows:

I'm so sorry for not responding. Indeed I missed the call at the end of April too. The situation has changed. My other (good) property agent managed to get into contact with the tenant (by continually visiting her!), and apparently she has been paying all along and the old (bad) agent was pocketing the money! So I referred the situation to the police but they've not been very useful. Are you aware of any other situations like this regarding R&J Properties? If so then the police should be told (I have the contact details of the officer who's responsible). My concern is that they've been doing this to others and it could be a significant crime. However the police officer has said that as he can't get hold of them he's basically giving up! Any thoughts on this??  
Many thanks David

7. The in-house convener reviewed the application again and the tribunal sent a further letter on 7 July 2023 as follows:

We acknowledge receipt of your email of 5 June 2023 in response to a request for further information. It has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters

- You have not addressed any of the issues contained in the letter from the tribunal to you dated 31 March.
- The tribunal notes that you now indicate that your tenant has been paying rent all along. Can you therefore please confirm that this application seeking an eviction order should now be withdrawn and that the linked application for a payment order under reference FTS/HPC/CV/23/0670 should also now be withdrawn.
- Upon receipt of the above information, a final decision can then be taken on whether the eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this request within two weeks of the date of the letter. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017
- You may wish to obtain independent legal advice on the matters contained in this letter Please reply to this office with the necessary information by 21 July 2023. If we do not hear from you within this time, the President may decide to reject the application.

8. The applicant has not responded.

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 frivolous or vexatious and has no reasonable prospect of success. The application is incomplete as there is no AT6, notice to quit and proof of service. It also appears that there is no valid eviction ground as, according to the applicant the tenant has been paying the rent and is not in arrears.
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 the applicant has failed to cooperate with the tribunal in the execution of its duties.

**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