



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 Darshan Bindra in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/2352

At Glasgow on the 7 October 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 Darsahn Bindra to recover possession of the property at 79 Salisbury Street Kirkcaldy KY2 5HP on the expiry of a short assured tenancy, in terms of Rule 66 of the Rules. The applicant submitted one Form E on 14 July 2022 and she ticked both rule 65 and rule 66. Rule 66 was allocated EV/22/2352 and EV/22/2350 was allocated to the rule 65 application.
2. The application was accompanied by the following:-
 1. Tenancy agreement for let of the property from 2 September 2017 to 2 March 2018 and month to month thereafter.
 2. Notice to leave dated 10 June 2022.
 3. AT5 dated 22 August 2017.
 4. Bank statements.
 5. 'Landlord possession notice' addressed to Fife Council.

3. The application was not complete and given the applicant had referred to both rule 65 and 66 the tribunal wrote on 10 August 2022 seeking further information and clarification as follows:

As you have ticked both Rule 65 and Rule 66 on the application form, two separate applications have been registered. If you only wish to proceed under one of these Rules, please confirm the position. Please provide the following

- For both applications, please provide a valid Notice to Quit with evidence of service on the Respondent. You have submitted a notice to leave. This notice only applies to private residential tenancies under the 2016 Act.
- For both applications, please provide a section 11 notice in the correct format with evidence that it has been sent to the Local Authority.
- For both applications, confirmation as to whether the joint owner should be added as joint applicant or written confirmation from them that the application can proceed in the sole name of the applicant
- For the Rule 66 application (2352), please provide a section 33 notice with evidence that it has been served on the Respondent.
- For the Rule 65 application (2350), please provide the following
 - (a) Evidence of service of the AT6 notice. Please also advise why you believe this notice to be valid as it does not fully narrate the grounds for possession as they appear in the legislation. Please also confirm that it is ground 11 and 12 of schedule 5 of the 1988 Act which are relied upon.
 - (b) A rent statement for the whole of the relevant period which shows the rent due, the payments made and the running total outstanding.
 - (c) Evidence of compliance with the Rent Arrears Pre action requirements regulations, if applicable.
 - (d) Redacted bank statements or confirmation that you are happy for the un-redacted bank statements to be given to the Respondent. You may wish to take legal advice before you respond.

4. The applicant responded on 12 August 2022 by stating that she only wished to proceed with the rule 66 application. She enclosed a set of photos which she stated was her husband delivering the notice to quit and s33 notice by hand on 11 August 2022. The documents were not enclosed with the email. The applicant also sent a further copy of the document headed 'Landlord Possession Notice' which she referred to as the s11 notice.

5. The tribunal made a further request for information on 9 September 2022 as follows

An in-house convenor has considered your application and responds as follows:

FTS/HPC/EV/22/2350: In order to close the application case opened for an application under Rule 65 please confirm in writing that you now wish to withdraw this.

FTS/HPC/EV/22/2352: "Thank you for the further information you have provided. Unfortunately it appears that you have not sent a copy of the Notice to Quit and S 33 notice you served on the Respondent in person on 11 August 2022. Please provide these documents now. Without the valid Notice to Quit the case cannot proceed." Please reply to this office with the necessary information by 23 September 2022. If we do not hear from you within this time, the President may decide to reject the application.

6. The applicant sent a further email to the tribunal on 12 September 2022 with a copy of a notice to quit and s33 notice. The notice to quit was dated 11 August 2022 with an ish date of 12 October 2022. The s33 notice was also dated 11 August 2022 and stated that the respondent was required to leave the property by 12 October 2022.
7. I note that the notice to quit produced by the applicant is only dated 11 August 2022, one month after the application was made. The notice to quit does not run out until 12 October 2022 so arguably the application is premature. There is however a more fundamental issue with the notice to quit. The notice to quit is invalid as it does not tie in with the ish date of the short assured tenancy agreement. Without a valid notice to quit an application in terms of rule 66 cannot succeed as the tenancy has not been brought to an end.
8. It appears that the applicant may have served a notice to leave in error on 10 June 2022. A notice to leave only relates to tenancies constituted after 1 December 2017. This tenancy was constituted in September 2017 and cannot therefore be a private residential tenancy. The applicant has served a notice to leave dated 19 June 2022 on the ground that the tenant has breached the tenancy agreement. Assuming for the moment that the notice to leave could be read as a notice to quit (which is not accepted) the date on the notice to leave by which the tenant must leave the property is 8 July 2022 which is not the ish date.
9. The applicant has also failed to produce a valid s11 notice with proof of service.
10. This application is being rejected as the notice to quit and s33 notice have yet to expire. In any event the notice to quit is invalid as it does not tie in with the ish date. The s11 notice is incorrect.
11. 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*". "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".
12. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. In addition to an invalid notice to quit, the essential information has not been provide despite two reasonable requests.

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