



**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 Angela Connor in terms of Rule 65 of the Rules.

**Case reference FTS/HPC/EV/22/2590**

At Glasgow on the 7 December 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 Angela Connor, recover possession of the property at 10 Auchendarvie Road Saltcoats KA21 5RL, in terms of Rule 65 of the Rules.
2. The application was dated 27 July 2022 and received by the Tribunal on 29 July 2022.
3. The application was incomplete and the Tribunal wrote to the applicant on 29 July 2022 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- It appears the application form is incomplete. There is a page titled Applicant Details Part 2 but a Part 1 does not appear to be enclosed. If a Part 1 was intended to be submitted, please submit this either by post or email.
- Evidence the applicant has that the possession ground or grounds has been met. Please reply to this office with the necessary information by 5 August 2022, otherwise the application may be rejected.

4. Mr John Connor wrote to the Tribunal on 10 August 2022 with further information. Mr Connor was not the applicant. The application was reviewed by the in-house convenor and a letter was sent to the applicant on 13 September 2022 as follows:

1) Someone who is not the applicant sent an e-mail attaching what appeared to be the top left hand corner of section 2 of the application form which the Tribunal previously requested. Please note the Tribunal can only accept information submitted by the applicant. Could you please send a copy of the missing page of the application form in respect of section 2.

2) The Tribunal notes that the tenancy agreement show the landlord as John Connor, as does the register of landlords entry. Please confirm the applicant's interest in this matter, and whether the applicant seeks to substitute John Connor as applicant in her place.

3) Evidence to show service of the notice to quit on the Respondent. You have provided a copy of the notice itself, but no evidence regarding when and how it was served on the tenant.

4) Evidence to show service of the form AT6 on the tenant. You have provided a copy of the notice itself, but no evidence regarding when and how it was served on the tenant.

5) Evidence to show intimation of the section 11 notice on the local authority.

6) The tenancy agreement appears to commence on 15th January 2015 and has a duration of 6 months. That would appear to indicate the ish dates of the lease are 15th January or 15th July each year. The notice to quit requires the tenant to leave on 19th July 2022, which does not appear to be an ish date of the lease. Please provide an explanation as to why you consider the 19th July 2022 to be an ish date of the lease. Supported by the Scottish Courts and Tribunals Service [www.scotcourtribunals.gov.uk](http://www.scotcourtribunals.gov.uk)

7) Copies of documents, letters or e-mail sent to the tenants in compliance with the terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

8) Your submissions on the circumstances in support of the reasonableness of the Tribunal granting an eviction order.

Please reply to this office with the necessary information by 27 September 2022. If we do not hear from you within this time, the President may decide to reject the application.

5. No reply was received. The Tribunal wrote a further request for information on 8 September 2022 as follows:

Before a decision can be made, we need you to provide us with the following:

1). The Tribunal wrote to you on 13 September 2022 asking for information which is necessary before this application can be processed further. There does not seem to be a reply to the letter of 13 September 2022 and thus please find attached a copy of the previous letter. Please now provide the information within 14 days. Without the documents and information it is likely that the application has to be rejected. Please note that if no reply is received on this occasion no further opportunity will be given to submit the information.

2). Please also provide a full copy of the AT6 document as there seem to be pages missing. Without a full AT6 notice showing the dates provided it is likely that the application will have to be rejected.

3). On the AT6 notice you only state as the grounds for the notice grounds 10 and 11. Please explain why you think ground 10 applies and provide evidence for this. The explanation on the application does not apply in this case as ground 10 relates to a notice having been given by the tenant and not by the landlord. Please explain how you think ground 11 applies and provide evidence for this, in particular a rent statement showing date, rent due, rent paid and running total of arrears/overpayments. Without evidence of the grounds it is likely that the

application will have to be rejected. Please reply to this office with the necessary information by 15 November 2022.

If we do not hear from you within this time, the President may decide to reject the application.

6. The tribunal chamber received a telephone call on behalf of the applicant on 10 November 2022 stating that the application is no longer required. They also indicated that they did not wish to withdraw the application as the President would be rejecting it.
7. As things stand the applicant has failed to respond to two detailed requests for further information. It also appears that the applicant no longer wishes to proceed with the application.
8. 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".
9. I consider that this application is hopeless and has no reasonable prospect of success. The essential information has not been provided despite two reasonable requests. 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 no longer wishes to proceed and has failed to withdraw the application.

**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