



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 Ms Mary Douglas in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/22/1418

At Glasgow on the 13 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 Ms Mary Douglas for eviction proceeding in connection with a private residential tenancy agreement (‘PRT’) in terms of rule 66 of the tribunal rules. The application was dated 13 May 2022.
2. The applicant made two applications on 13 May 2022. Both purported to be in terms of both rule 66 and rule 109. The tribunal allocated the reference FTS/HPC/EV/22/1418 to the rule 66 application and FTS/HPC/EV/22/1419 to the rule 109 application. The application made a third application in terms of rule 111 to recover rent arrears.
3. The tribunal entered into detailed and lengthy correspondence with the applicant in an effort to ascertain which rule should be used. All the documents lodged by the applicant appeared to relate to a private residential tenancy and not an assured or short assured tenancy. The inhouse convener reviewed all three applications most recently on 2 August 2022 and invited the applicant to withdraw this application and proceed with the remaining two applications on the basis that the agreement between the parties was a private residential tenancy and not an assured tenancy. The applicant has failed to withdraw the rule 66 application.
4. 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”**.

5. "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".

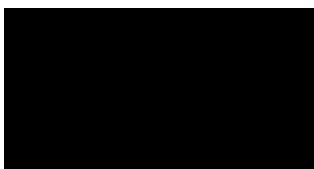
6. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as the wrong rule has been used. The applicant has an identical application in terms of rule 109 which is still proceeding. Further I have good reason to believe it would not be appropriate to accept the application as the applicant has an ongoing application in relating to the same property which has been made in respect of the correct rule, namely rule 109.

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