



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 Lorna Abercrombie in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/1205

At Glasgow on the 16 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 Lorna Abercrombie for eviction proceedings. The application was made on her behalf by Mrs Jacqui Lamb of Rannoch Property. The application was incomplete.
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 19 May 2022 seeking further information as follows:
 - *Please provide an amended application form as the form submitted refers to grounds 8 and 11 which are eviction grounds under the 1988 Act. The rent arrears ground for PRTs is ground 12.*
 - *The Notice to leave appears to be invalid as it does not give the Respondent 6 months notice which is required for notices issued before 31 March 2022 on ground 12. Furthermore, the date specified in the notice has not passed so the application appears to be premature. Please advise if you wish to withdraw the application and re-submit it once the 6 month notice period has passed. Alternatively, please advise if you wish to ask the Tribunal to entertain the application although you have not complied with the legislation in relation to notice periods. If you chose this option a decision will not be made until the CMD or hearing and you will need to show it is reasonable to do this or the application will be refused.*
 - *Please confirm how and when the notice to leave was given to the Respondent, and provide evidence of this.*

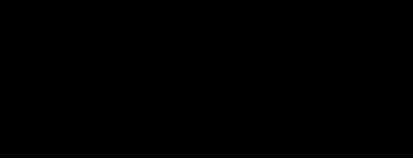
- Please advise if the joint owner wishes to be added as joint Applicant or provide written authority from them for the application to proceed in the sole name of the Applicant.
 - Please advise if the Applicant has complied with the Rent Arrears Pre Action Requirements Coronavirus Regulations and provide evidence of this. Compliance will be taken into account when the Tribunal assesses reasonableness.
3. The applicant has not responded.
 4. There are difficulties with this application as it currently stands. The agreement between the parties is a private residential tenancy agreement however the document used to bring the tenancy to an end is a notice to quit. The eviction ground is not set out in the document and the correct notice period has not been given. The notice is dated 1 December 2021 and the notice states that the tenant has to leave by 4 January 2022. Even the correct notice to leave had been used and the correct information provided in it, the notice period should be 6 months in terms of s2 and schedule 1 of the Coronavirus (Scotland) Act 2020.
 5. There are other difficulties as proof of service of the notice has not been provided. I also note that in the s11 notice the wrong legislation is used, although this is not fatal and can be rectified. The application has not been amended to include the correct eviction grounds.
 6. 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”***.
 7. “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”.
 8. 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 a request being sent by the tribunal. 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.
 9. It is open for Mrs Abercrombie 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 Anne Ward

Legal Member