



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 Ann Anderson in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/22/2179

At Glasgow on the 6 March 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 Mrs Anderson for eviction in terms of rule 109 of the Rules. The application was made on her behalf by Miss Cara Teven solicitor of Jones Whyte LLP. Ms Claudia Hoey of the same firm took over the matter on 15 July 2022. There is a second application to recover rent arrears under reference FTS/HPC/CV/22/2183.
2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant’s representative on 18 August 2022 seeking further information as follows:

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

(1). The Title Deed indicates that the Applicant is not the sole owner of the Property but is acting as a Trustee along with other Trustees. It is also noted that the tenancy agreement shows joint landlords. Please confirm whether all Trustees are to be joint applicants, failing which, provide written authorisation from the Trustees to indicate that the Applicant(s) were entitled to let the property and are entitled to make the applications.

(2) The Notice to Leave provided is dated 2nd April 2022, and the notice period given falls short of the required 28 days. Furthermore, the certificate of service states that a Notice to Leave was served on 18th May 2022, which is after the period of notice had expired. Please confirm whether there is a further Notice to Leave, as served on 18th May 2022, and provide a copy of the same.

(3). Please confirm whether the Applicant has complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and provide evidence of this, if possible. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant the order.

Please reply to this office with the necessary information by 1 September 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. The applicant's representative made a partial response on 24 August 2022 as follows:

With regards to the Tribunal's Point 1, please find our information as follows: -

The Application, Ann Anderson and her husband Paul Anderson are the Trustees of the property along with the solicitor who did the conveyancing of the property. The solicitor who is also a Trustee of the property is Miss Erica Watt of MM Legal. We can provide a letter from Erica Watt, should the Tribunal require this. The landlord registration for the property is purely in Mrs Ann Anderson's name in isolation.

With regards to the Tribunal's Point 2, please find our information below: -

The first Notice to Leave was served by previous colleague, Ms Cara Teven, on 31st March 2022 by way of recorded delivery. The tracking number for this is NL 9041 8401 2GB and upon tracking it states that the item was forwarded to the national return centre due to it exceeding their holding period at the Bishopbriggs office. A further Notice to Leave was sent on 6th May 2022 by way of recorded delivery. It appears that delivery was unsuccessful once again. As a result of this, Ms Cara Teven, instructed Nelson James Sheriff Officers to send a new Notice to Leave to the tenant dated 11th May 2022. We understand that the letter provides 28 days rather than 28 days plus 2, however, the notice period for the tenant to vacate the property would have fallen on 10th June 2022. Ms Cara Teven then lodged Form E and Form F, Notice to Leave, Proof of Delivery, and Section 11 Notice and Statement of Rent Arrears, with the Tribunal on 1st July 2022 which allows the adequate notice for applying for an Eviction Order as this could have been done after 10th June 2022. It is understood that the adequate notice has now been provided to the tenant in order to vacate the property and they have not done so. Therefore, this action is necessary.

With regards to the Tribunal's Point 3, please find information below: -

The applicant has provided that the tenant moved into the property and paid rent until December 2021. It was initially a fixed term of 6 months and the tenant wanted it to be a long term let and the applicant agreed that if everything was in order after the first 6 months they were willing to consider this. When the tenant failed to pay on time, the applicant attempted to contact him by telephone, however, he refused to answer and blocked her telephone number. The applicant attended the property on 8th January to discuss matters with the tenant and he stated he would not be paying anymore rent and if the applicant wanted him out of the property they would require a Court Order. The applicants were mindful of the COVID legislation at this time, and they suggested that the tenant contacted the local council who recommended him to use her as a landlord at the outset and also Citizens Advice Bureau. The tenant went to the Citizens Advice Bureau but did not apply for any housing benefits. The applicant was advised by the council that they would look into matters if he applied for help and if there was any COVID funds available if he applied. To the applicants knowledge the tenant never applied for any help from the council or for this COVID fund. The applicant and the previous legal agent, Ms Cara Teven, discussed the COVID legislation at length prior to commencing with any eviction proceedings. Once the Notice to Leave had expired the applicant did approach the property to establish

whether the tenant had moved out. The tenant opened up the upstairs window and shouted at them saying he was not moving or paying a penny and they were told to go away and abusive language was expressed by the tenant. To the applicant's knowledge the tenant is not paying council tax and debt collectors have been in contact with regards to this. It is clear to the applicant that the tenant has no intention of removing himself from the property or claiming any benefits to allow him to pay the rent. The Applicant provided the tenant ample opportunity to pay the sums due. We should be most grateful if this information could be passed to the relevant case worker and an updated could be issued to us in due course.

4. The application was further reviewed by the inhouse convenor and a further request for information was sent on 13 October 2022 as follows:

Your applications have been further reviewed by the In-House Convenor who has raised the following matters. Your response dated 24 August 2022 has been noted by the tribunal. You were asked by the tribunal to provide written authority from all the trustees indicating that the applicant (Ann Anderson) was entitled to let the property along with Paul Anderson and also entitled to make the applications in her sole name. You indicate that you can provide a letter from Erica Watt. Please provide this letter and also one from Paul Anderson confirming his consent to the applications proceeding. Please provide a copy of the Notice to Leave (NTL), which was apparently served by Sheriff Officers on 18 May 2022. Please reply to this office with the necessary information by 27 October 2022. If we do not hear from you within this time, the President may decide to reject the application.

5. No response was received and the tribunal sent a reminder on 2 December 2022. The tribunal sent a further detailed email on 30 January 2023 as follows:

We refer to our letters of 13th October and 2nd December and note we have not had a response to either. Please note the following requires a response and if we do not hear from you in response to this request it is very likely your applications will be rejected. If you do not wish to proceed with these applications you can withdraw them by advising us in writing.

(1). As previously advised your applications were reviewed by the In-House Convenor who has raised the following matters. Your response dated 24 August 2022 has been noted by the tribunal. You were asked by the tribunal to provide written authority from all the trustees indicating that the applicant (Ann Anderson) was entitled to let the property along with Paul Anderson and also entitled to make the applications in her sole name. You indicate that you can provide a letter from Erica Watt. Please provide this letter and also one from Paul Anderson confirming his consent to the applications proceeding .

(2). Please provide a copy of the Notice to Leave (NTL) which was apparently served by Sheriff officers on 18 May 2022. If the NTL which was served by sheriff officers on that date is the same notice which you have provided (which was dated 2 April 2022 and which apparently became effective on 29 April 2022) please explain to the tribunal why you believe such a notice is valid. Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 and particularly sections 54(2), 62(4) and 62(5) of that Act and confirm whether the NTL meets the requirements of those sections (with particular regard to the required period of notice to be given to a tenant and the date upon which the landlord expects to become entitled to make an application to the tribunal) and whether it should be regarded as valid. Upon receipt of the above information, a final decision can then be taken on whether your eviction applications are valid and whether they should be accepted and referred to the tribunal for full determination. 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 201. Please now respond by 09 February 2023 failing which your application is likely to be rejected.

6. No further correspondence from the applicant's representative has been received since.
7. 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"***.
8. "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 frivolous or vexatious and has no reasonable prospect of success as it is not clear the applicant has right title and interest to make it. It is not clear that the notice to leave issued is valid. The essential information required to enable the application to proceed has not been provided, despite two detailed requests for information being sent by the tribunal.
10. 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's representative has failed to cooperate with the tribunal in the execution of its duties.
11. It is open for the applicant 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.

L Ward

Lesley Anne Ward

Legal Member