



**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 111 of the Rules.

**Case reference FTS/HPC/CV/22/2183**

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 to recover rent arrears in terms of rule 111 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 for eviction under reference FTS/HPC/EV/22/2179.
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.

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.

The remainder of the letter related to the eviction application.

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 7 December 2022. (A reminder was also sent for the eviction case on 2 December 2022, hence the reference to 2 December 2022 below). No response was received.
6. 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.

7. No further correspondence from the applicant's representative has been received since.
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"***.
9. "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".
10. 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. 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.
11. 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.
12. 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