



**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 Mr Derek Steel terms of Rule 65 of the Rules.

**Case reference FTS/HPC/EV/22/1069**

At Glasgow on the 27 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 Mr Derek Steel for recovery of possession of the property at 41 Swinton Crescent Kirkwood Coatbridge ML5 5SD in terms of Rule 65.
2. The application was initially made in terms of rule 109. It was dated 9 April 2022 and received by the tribunal on 13 April 2022.
3. The application was incomplete was first reviewed by the inhouse convenor on 3 May 2022. A request for clarification and further information was sent on that date as follows:
  - Before a decision can be made, we need you to provide us with the following:
    - Please provide a copy of the tenancy agreement.
    - The notice to leave refers to another tenant, John Dow. If Mr. Dow is a tenant please amend the application to add him as a second respondent, or explain why he is not to be a party to these proceedings. Please reply to this office with the necessary information by 17 May 2022. If we do not hear from you within this time, the President may decide to reject the application.

4. The applicant wrote to the tribunal on 9 May 2022 as follows:

*Please find attached a copy of two contracts. One is the original from 2013 which is signed by Lauren. The one from 2018 was a new contract when Mr John Dow moved in with Lauren. I posted a copy of this contract to Lauren by agreement as I was too ill to travel. I agreed to do this if they agreed to date, sign and post back. This she has not done and I never received a signed copy. Mr John Dow is now no longer part of these proceedings as he is currently serving 6 years in prison. Can I also refer you to a third attachment I received from Coatbridge Council telling me they have received a complaint regarding the state of the front and back garden Lauren has left my house in. She has been given 7 days to clean up the gardens or legal proceedings will be followed against the owner occupier. Lauren is also in a significant amount of rental debt. It stood at roughly £1,300 but when I last asked the council this was down to roughly £848. Since then Lauren has missed another month of rent adding £525 onto what is left. I have messaged Lauren with a view to paying me the £525 direct, but have found she is currently abroad in the Gran Canaria and not responding to any messages.*

5. The application was reviewed again by the in-house convenor and a letter was sent to the application on 31 May 2022 as follows:

- You have submitted 2 tenancy agreements. The first is a signed short assured tenancy from 2013. The second is an unsigned PRT. Although a PRT does not require to be signed, it can only supersede an earlier tenancy if the tenant agrees to this in writing. From the documents provided, it appears that the tenancy is still a sole assured tenancy and not a joint PRT.
- If you consider the tenancy to be a PRT please provide evidence that the tenant agreed in writing to this replacing her previous tenancy. If there is a joint tenant, even if he has moved out, the application has to be made against both of them and you will have to provide evidence that both have been served with the Notice to leave.
- If you are unable to provide this evidence, and accept that the assured tenancy agreement is the current one, you will require to withdraw the application and resubmit it under Rule 66 or 65 with the correct notices and documents. Information about applications under these Rules can be found on the Chamber website. Please reply to this office with the necessary information by 14 June 2022. If we do not hear from you within this time, the President may decide to reject the application.

6. The applicant responded on that date stating that in his view he had submitted everything required for his eviction appeal. The applicant then submitted an amended application in terms of rule 65. The application was further reviewed by the inhouse convenor on 5 July 2022 and a letter was sent in the following terms:

- You have submitted a further application form which refers to Rule 65. However, you have not provided the relevant notices which must accompany a Rule 65 application. A Notice to quit is required and an AT6 notice is also required unless you are asking the Tribunal to dispense with this notice. You should also

note that “landlord intends to sell” is not a ground for possession under the Housing (Scotland) Act 1988. The application cannot be accepted without the required documents and information. If you have not issued the correct notices to the respondent you should withdraw the application and resubmit it once you have done so. As previously advised, the Tribunal cannot provide a party with legal advice. You may wish to take legal advice before you respond. Please reply to this office with the necessary information by 19 July 2022. If we do not hear from you within this time, the President may decide to reject the application.

7. The applicant did not make a substantive response to this request for information. On 10 July 2022 he wrote to the tribunal with a copy of a letter sent to the respondent on 21 September 2021 advising her of his intention to sell the property.

8. The application was reviewed again by the inhouse convenor on 8 August 2022 and a letter was sent on that date in the following terms:

- We have attempted to explain clearly to you why the application cannot be accepted in its present form. You have amended the application to a Rule 65 application, which refers to an assured tenancy (the 2013 tenancy in this case). The situation is that, for an assured tenancy, the notices that require to be served on a tenant are different to those that are served for a private residential tenancy. You have not served the correct notices, as the Notice to Leave which you have served and lodged is only relevant for a private residential tenancy (the 2018 tenancy in this case).
- If you accept that the tenancy continues to be an assured tenancy, and you wish to continue with a Rule 65 or Rule 66 application, you will require to serve the correct notices; however, there are crucial requirements for the validity of such notices which differ significantly from the Notice to Leave, and you would be advised to take advice as mentioned below.
- You have also stated previously that a private residential tenancy was put in place by verbal agreement. Should you wish to continue to make this argument, which may be challenged by the Respondent in due course, and continue under Rule 109, you would also have to serve a Notice to Leave upon the second tenant, as you have stated that the private residential tenancy was put in place with two tenants. It is not for the Housing and Property Chamber to advise you on how to serve the Notice. If you require to take advice on this matter, you should do so. In short, it is for you to decide and inform us which Rule you are lodging the application under. It would seem that, at present, we cannot accept the application under Rule 65 as the correct notices have not been served, or under Rule 109 as the Notice to Leave has not been served on all tenants.

9. The applicant contacted the tribunal on that date. He did not make a substantive response to the tribunal’s letter of 8 August 2022. He stated *‘I have been going back and forward with you guys for I do not know how long now Every single time you come back and tell me something is wrong. Or you lose my application and pretend you never received it until I proved otherwise. The only condition I needed to amend according to you lot was to change to a rule 65, which I done. After a lot of emails where you lied about me giving you the wrong application, you finally accepted that I had given you the correct one and that you finally had everything. Now after weeks of waiting you tell me the notice period is wrong? I gave 6 months notice for the tenant to leave. As far as I am aware that is long enough’.*

10.

11. The applicant has failed to give a substantive response to the tribunal's request for further information. To date the applicant has failed to produce a valid AT6 with a valid eviction ground and proof of service of the AT6. He has failed to provide a notice to quit and proof of service.

Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if "**they consider that applications 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".

12. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. 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 has failed to cooperate with the tribunal in the execution of its duties. The applicant has failed to respond to a reasonable request for further information which has been outstanding since 31 May 2022, despite a further detailed letter of 8 August 2022.

13. In accordance with the overriding objective I am rejecting this application for the foregoing reasons.

**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