



**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 Steven Smith, ostensibly in terms of rule 78 of the Rules.

**Case reference FTS/HPC/PR/21/2673**

At Glasgow on the 21 April 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 Steven Smith. Mr Smith made an application to the tribunal in terms of rule 78 of the rules. The application is dated 30 January 2021 but was received by the tribunal some months later, on 1 November 2021. Mr Smith named Mrs Wendy Stewart as his representative and the tribunal has been corresponding with Mrs Stewart since November 2021.
2. Mr Smith sent the following documents with his application:
  - (a) Fire Report by Hamilton Fire Station regarding 254B Main Street Hamilton.
  - (b) Photographs.
  - (c) Email from Mr Smith to John Paul Longmuir dated 9 February 2020,
  - (d) Statement of Mr Smith.
  - (e) Mandate authorising Mrs Stewart to act on his behalf.
3. This application has been reviewed by various in house convenors since November 2021 and various requests for further information have been sent. It appears that Mr Smith rented the property at 252 Main Street Blantyre and on 6 July 2019 that property was damaged by fire and Mr Smith unfortunately lost all of his belongings.

4. The inhouse convenor ascertained that rule 78 was probably not applicable as that rule relates to an application for compensation for misrepresentation or concealment by a landlord where an eviction order has been granted in very limited circumstances. The tribunal first wrote to the applicant's representative on 16 November 2021 as follows:

*Please provide the following information or documentation:*

- 1. A copy of the tenancy agreement between you and the landlord. If there is no tenancy agreement, you should provide details of the start and end date of the tenancy agreement. You should be aware that Rule 78 deals with applications under S 21 of the Rent (Scotland) Act 1984 – if your tenancy commenced under The Private Housing (Tenancies) (Scotland) Act 2016 or the Housing (Scotland) Act 1988, this is not the appropriate rule for your application*
- . 2. An application under this rule can only be made after the landlord has obtained an order for possession and Rule 78 requires that this is produced in evidence. Please provide a copy of the order for possession, if this is the correct rule for your application.*
- 3. A written submission clearly outlining the legal and factual basis of the claim in terms of Section 21 of the Rent (Scotland) Act 1984.*

5. The applicant's representative sent a copy of the PRT on 23 November 2021. The tribunal sent a further request for information and clarification regarding the application on 2 December 2021 as follows:

*Thank you for your recent response enclosing a copy for the tenancy the Applicant Mr Smith appeared to have with A & G Rentals.*

- 1. You have made an application using rule 78 and as previously advised this only applies to tenancies created under the Rent Scotland Act 1984. The Tenancy you have submitted is one created under the Private Housing (Tenancies) (Scotland )Act 2016 known as a private residential tenancy (PRT). Can you please therefore clarify what you are seeking from the Landlord and the basis of your claim. It is not clear from what you have submitted so far what you are trying to claim or why. Any claim for civil proceedings such as damages in relation to a PRT can be made under Rule 111 but must contain the reason for making the application, and evidence to support the application. If you believe the landlord has caused the Applicant loss you need to clearly specify how that has happened and why the Applicant believes it is the landlord's fault. You also need to provide evidence to support the sum you are seeking in the way of compensation of loss, including if possible receipts or valuations or the cost of replacement items if applicable. If you are trying to make a claim for wrongful termination that is made under Rule 110 and must be accompanied by information as to how the tenancy was unlawfully terminated. Whatever rule you chose to apply under you will be required to provide a written submission clearly outlining the legal and factual basis of the claim. Please amend your application to set out what rule you are applying under and to provide details of the legal and factual basis of your claim?*
- 2. Please confirm why the Respondent should be A & G Properties Ltd who you have named as a respondent while the landlord named in the lease is A & G Rentals OR please amend the name of the Respondent? You may wish to take legal advice which can be provided by a solicitor or other agency such as Shelter or Citizen's advice bureau. Please let us have your response within 14 days failing which your application may be rejected,*

6. On 22 December 2021 the applicant's representative wrote and stated that she wished the application to be considered under rule 110.

7. The tribunal sent a third detailed request for clarification and further information on 10 January 2022 as follows:

*1. You have asked to amend the application to Rule 110. This rule only relates to applications for compensation for wrongful termination of tenancy where a tenant has been issued with a notice to leave or an eviction order and has left the property as a result. You have provided no information or evidence to support an application under this Rule. If you want to proceed under this rule you must provide evidence and information in support of it. If you are seeking compensation from the landlord for losses arising out of a fire at the property you must provide the following 1. A completed form F (which is the form for civil proceedings)*

*2. Confirmation that you wish to proceed under Rule 111.*

*3. An explanation of the legal basis of the application. You have indicated that there was a fire. The Fire Service Report appears to indicate that it was accidental. Please clarify why the respondent is due to compensate you for your losses. You make reference to the landlord's insurance and loss adjuster but the landlord's insurance may only cover his losses. You will require to give a reason why the landlord is responsible for the losses you have incurred and provide evidence of the value of the losses. Please note that you must provide a response to all parts of this letter. You cannot simply indicate that you wish to amend the rule, as in your previous response. If you fail to provide a full response, the application is likely to be rejected.*

8. The applicant's representative responded on 26 January 2022 giving a list of items that the applicant had lost in the fire. No application to amend was received.

9. The tribunal sent a further letter on 14 February 2022 inviting the applicant to consider amending the application to rule 111 and seeking further evidence as follows:

*Your further information has been assessed by a legal member. You should now complete the Form F. When submitting the form, you must ensure that you provide the following, as previously notified to you: An explanation of the legal basis of the application. You have indicated that there was a fire. The Fire Service Report appears to indicate that it was accidental. Please clarify why the respondent is due to compensate you for your losses. You make reference to the landlord's insurance and loss adjuster but the landlord's insurance may only cover his losses. You will require to give a reason why the landlord is responsible for the losses you have incurred and provide evidence of the value of the losses.*

10. A further reminder was sent on 21 March 2022. The applicant's representative submitted screenshots of a portion of form F and stated in the form that the application is being made in terms of 'rule 78 section 111'.

**11.** 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"**. "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 am rejecting this application. Rule 78 is not applicable for the reasons already given above. Rule 110 is not applicable as it also relates to a wrongful termination order. Rule 111 may be applicable but the applicant has failed to submit an application in terms of Rule 111. Even if an application in terms of Rule 111 had been submitted, the applicant has failed to explain why the respondent is liable for his losses or to set out what those losses are, as requested in the tribunal 's letter of 14 February 2022 and 10 January 2022. There was some documentation submitted on 4 April 2022 but this consists of screenshots and it is not comprehensible.
13. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. An application in terms of Rule 111 has not been made. The essential information has not been provide despite numerous requests. 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 at is not comprehensible and fair notice has not been given to the respondent of what the applicant is seeking and why. It is open to the applicant to resubmit an application in the proper form with the applicable rule and the applicable information.

**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