



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 Miss Nicola Jinks in terms of Rule 110 of the Rules.

Case reference FTS/HPC/PR/22/2420

At Glasgow on the 9 November 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 Miss Nicola Jinks in terms of rule 110 of the rules. The application is dated 16 July 2022 and was entered into the chamber case management system on 21 July 2022. The application appears to be attempting to seek damages in respect of an alleged wrongful termination order.
2. The in-house convenor reviewed the application and a letter was sent to the applicant on 16 August 2022 as follows:

Your application has been referred to a legal member. The legal member requests further information as follows:

- Please send a copy of the Notice to Leave served on you.
- Please complete Part 7(c) of the Application detailing the remedy you seek and why along with supporting documentation (if any).
- There are 2 landlords named in the tenancy agreement. Please confirm if you wish to amend the application to include both landlords.
- You may wish to take legal advice on this matter before responding. Please reply to this office with the necessary information by 30 August 2022.

3. The applicant responded on 16 August 2022 as follows:

Hopefully you have access to prior emails and the information I provided previously. I stated before that I unfortunately don't have a notice to leave as the landlord did everything via telephone call. I would like

to leave just the landlord Ewan MacNeill as he is the one who evicted me, not his wife. The outcome I was looking for, was to make you aware of this landlords wrong doings and that he is unfit to be a landlord in charge of any property's and tenants. As well as guilt tripping myself into moving out, my deposit was not placed into a safe deposit scheme, and the kitchen was unfit for use for part of the agreement. I am looking for compensation for having to move out so quickly and find my own accommodation again.

4. The application was reviewed by the in-house convenor ages and a further letter was sent by the tribunal on 20 September 2022 as follows:

Before a decision can be made, we need you to provide us with the following: An application for a wrongful termination order can only be made if the tenant vacates the property following an eviction order from the Tribunal or a Notice to leave from the landlord. Although a notice to leave does not have to be in the prescribed format it does require to be in writing and comply with the legislation. Please advise if you were issued with any written notice, and provide a copy of it, or explain why the Tribunal can entertain the application in the absence of the notice. Please reply to this office with the necessary information by 4 October 2022. If we do not hear from you within this time the President may decide to reject the application.

5. The applicant has not responded and no further information has been provided.
6. Rule 110 provides:

Application for a wrongful termination order

110. Where a former tenant makes an application under section 57(2) (wrongful termination by eviction order) or section 58(2) (wrongful termination without eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name and address of the former tenant;

(ii)the name, address and profession of any representative of the former tenant; and

(iii)the name, address and registration number (if any) of the former landlord;

(b)be accompanied by evidence showing that the tenancy was unlawfully terminated; and

(c)be signed and dated by the former tenant or a representative of the former tenant.

7. Section 57(2) of the Private Housing (Tenancies)(Scotland) Act 2016 ('the Act') provides:

57Wrongful termination by eviction order

(1)This section applies where a private residential tenancy has been brought to an end by an eviction order.

(2)An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was, immediately before the tenancy ended, either the tenant or a joint tenant under the tenancy.

(3)The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.

(4)In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

8. Section 58 provides:

58 Wrongful termination without eviction order

(1)This section applies where a private residential tenancy has been brought to an end in accordance with section 50.

(2)An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy (“the former tenant”).

(3)The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.

(4)In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

8. A private residential tenancy brought to an end in terms of s50 of the Act is one where a notice to leave has been issued and the tenant has left the property. For an application in terms of rule 110 to be successful an applicant has to show either that an eviction order was granted by the tribunal or a notice to leave was issued. The applicant has failed to provide either document.

9. 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”**.

10. “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”.

11. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as the essential element required in terms of rule 110 has not been provided, despite two requests by the tribunal for further information. 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.

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