



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 Thomas Collins in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/23/1094

At Glasgow on the 13 November 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 Mr Thomas Collins owner of 12 Brodrick Square Glasgow G64 1NR (‘the property’) for eviction in terms of rule 109 of the Rules. The application was dated 3 April 2023 and received by the Tribunal on 6 April 2023.
2. The in-house convenor reviewed the application and the Tribunal wrote to the Applicant on 26 April 2023 seeking further information as follows:

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

- 1. Please clarify the eviction grounds. The Notice to leave only refers to grounds 11 and 12. The application includes ground 8 (tenant has ceased to be an employee of the landlord) and ground 13 (tenant has a relevant criminal conviction). If you do not intend to rely on these grounds please provide an amended form which only specifies 11 and 12.
- 2. Please provide a rent statement showing the rent due, the payments made and the running total outstanding for the relevant period.
- 3. Please note that ground 11 cannot be used for rent arrears. Please confirm which term of the tenancy has been breached and provide evidence.

- 4. The Notice to leave appears to be invalid if it was given to the tenant on or after 3 January 2023. This is because the date in part 4 is incorrect. This should be 1 February, if the Notice was hand delivered or 3 February if it was sent by post or email. Please confirm how and when the Notice was served and provide evidence.
- 5. Please provide a copy of the section 11 notice sent to the Local Authority, with evidence that it was sent.
- 6. If you have complied with the Rent Arrears pre action protocol, please provide evidence of this. Please reply to this office with the necessary information by 10 May 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. The applicant replied on 20 May 2023 as follows:

I spoke with you when I got back from working away last Friday regarding eviction of tenant and first tier tribunal form filled out incorrectly. I got in touch with citizens advice and they are now saying they can't help me or advise me due to legal technicality. I've been speaking to them since January they are now saying I need to speak directly to the council who will help as it one of there tenants I have housed but didn't managed to get in touch with them before going abroad. They did advise me to get a lawyer if I want this situation to be processed and done as quickly as possible. Just feel like I've been lead down the garden path for the last few months with lie after lie. I'm home from holiday on Monday for a few days before I go away to work again. If you can advise me best course of action to take thanks. Thomas Collins.

4. The Tribunal sent a reminder on 15 June 2023 as follows:

The Tribunal cannot provide you with advice. Advice may be obtained from Shelter Scotland or a Solicitor. Please provide the information requested in the Tribunal's email to you of 26 April 2023. Please reply to this office with the necessary information by 29 June 2023. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant sent an amended application to the Tribunal via a representative, together with bank statements.

6. The Tribunal sent a further letter on 4 September 2023 as follows:

Your further information has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following:

(1). You have not responded in full to our request for further information, including providing evidence of service of the notice to leave. However, it would seem that, even if the notice to leave was hand-delivered on 3rd January 2023, the notice is invalid, as the date inserted at Part 4 is incorrect. If it was served by email or recorded delivery, a further period of 48 hours should have been added, and the date inserted at Part 4 would be the date after the 28 day notice period, plus the 48 hours for service. Please consider withdrawing the application and serving a further notice to leave. You may wish to take advice to ensure you serve a further notice correctly.

You should be aware of the following for future applications:

(2) You have now amended the application form to state ground 8A. There is no ground 8A applicable to a private residential tenancy.

(3) You have not provided a clear rent statement showing rent due, rent paid and running total of rent arrears. This must be provided with any further application. Unredacted bank statements should not be lodged. 4. You have not provided a section 11 notice with evidence of service on the local authority. An application cannot be accepted without this.' Please reply to this office with the necessary information by 18 September 2023. If we do not hear from you within this time, the President may decide to reject the application. If you require any further information, please contact us, quoting your reference number.

7. The applicant's representative wrote to the Tribunal on 27 September 2023 stating that they were going to seek legal advice and would be in touch.
8. The Tribunal sent a further request for information on 10 October 2023, sending a further copy of the letter of 4 September 2023 and stating:

You have not provided a response to the Tribunal's previous request for information, a copy of which is attached. Please confirm when and how the Notice to leave was served on the Respondent and provide evidence of this. However, if it was given on or after 3 January 2023, the Notice will be invalid and the application should be withdrawn. You may wish to take legal advice before you respond. Please respond within 7 days or it is likely that your application will be rejected.

9. No reply has been received.
10. 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"***.
11. "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 frivolous or vexatious and has no reasonable prospect of success. There is no proof of service of the notice to leave, the wrong notice period has been given and the eviction grounds are erroneous.
13. 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.

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.



Legal Member