



**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 an application FTS/HPC/EV/23/3082 by Mr Alexander Hunter in terms of rule 65 of the rules.**

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 Alexander Hunter owner of 77/2 Calder Gardens Edinburgh EH11 4LF ‘the property’, for recovery of possession of the property in terms of Rule 65.
2. The application was dated 31 August 2023 and received by the Tribunal on 6 September 2023.
3. The application was accompanied by the following:
  - Tenancy agreement dated 6 March 2000.
  - Undated notice to leave.
  - Letters to tenant dated 1 April 2023, 31 July 2023.
  - Email to police dated 24 July 2023 and police incident number.
  - Letter to local authority dated 1 April 2023.
4. The application was incomplete and the Tribunal wrote to the applicant on 6 September 2023 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- the notice by landlord that the tenancy is a short assured tenancy (“AT5”)
- the notice given to the tenant under section 33(1)(d) of the 1988 Act
- evidence of the notice given to the tenant under section 33(1)(d) of the 1988 Act being served by the landlord on the tenant
- the Notice to Quit
- evidence of the notice to quit being served by the landlord on the tenant
- a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable)
- evidence of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable) being provided to the local authority’

Please reply to this office with the necessary information by 13 September 2023, otherwise the application may be rejected.

5. The applicant wrote to the Tribunal on 16 September 2023 as follows:

Further to your email on the 6th September and my subsequent telephone call with one of your agents on the 15th September would kindly take this email into consideration for my case.

I do not have any further documentation other than the paperwork already submitted to you when I raised the case with you. Therefore I am unable to provide any more information. I found the form difficult to complete and having no-one to help me I completed the document with as much information as I had and with total clarity and honesty. The agent I spoke to on the 15th September suggested that I write to you with an explanation and this is my confirmation to this.

Since I have been forced to retire due to ill health I need the property rented by Ms S Mason returned to me to provide income going forward. This is a no fault eviction and there are no rent arrears as Edinburgh City Council provide the rent. I gave notice and reminders since the beginning of this calendar year and also sent copies to Edinburgh City Council to keep them informed. At no point has Ms S Mason ever acknowledged the receipt of the letters (despite me having proof of delivery) nor has she contacted me at any point. In fact through her whole tenancy she was very difficult to communicate with at any time. We tried, unsuccessfully to carry out inspections and repairs but could never gain access. I also had to repair the front door when her son caused criminal damage (I attached the police report with my application). I would appreciate if you would accept this email as my request to progress this case as soon as possible as no more information or documentation is available.

6. The in-house convenor reviewed the application and the Tribunal wrote to the applicant on 2 October 2023 as follows:

(1). You have applied for an application for eviction of your tenant where the lease apparently started in 2000. This would appear to make the lease a tenancy created under the Housing Scotland Act 1988 and you have applied under Rule 66 which is for an eviction using S33 of that Act in relation to a short assured tenancy. As previously stated to apply under this section and Rule 66 the landlord has to provide the following:-

a. evidence that this is a short assured tenancy which means a form AT5 was served on the tenant before the tenancy was commenced. If you have not served an AT5 form then this cannot be a short assured tenancy and you cannot raise the application under rule 66. You have advised that you do not have any further paperwork so it appears this is not a short assured tenancy but please confirm you have not served a form AT5?

b. If it is a short assured tenancy we also need a valid notice to quit, s33 notice and s11 notice to the local authority with evidence of service to the tenant and local authority.

(2). If it is not a short assured tenancy then it could be an assured tenancy however to raise an application for eviction of a tenant under an assured tenancy you have to provide the following:-

a. A valid notice to quit (you have used a notice to leave which is not appropriate for this type of tenancy and only applies to tenancies started after December 2017.)

b. A valid S18 notice or AT6.

c. Evidence of service of both the notice to quit and AT6 notice on the tenant such as proof of recorded delivery or sheriff officer service.

d. Evidence to support the ground of eviction ( the grounds are set out in the Act but do not include the landlord wishes to sell)

e. Evidence to support the ground of eviction. F.S11 form served on the local authority together with evidence of service on the local authority. Please advise if you have any of these documents and please provide them. If you do please confirm if you wish to apply under rule 65 which is the rule relating to applications under S18. h. If you do not have any paperwork relevant to an application under s18 then you may wish to withdraw your application and reapply when you have served the relevant paperwork. We would recommend that you seek legal advice as evictions can be complex. Please reply to this office with the necessary information by 16 October 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.

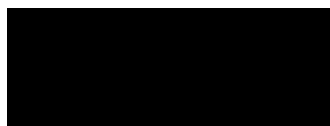
7. The applicant did not respond.
8. This is an incomplete application. It is not clear whether rule 66 even applies as there is no AT5. Further, there is no notice to quit and no section 33 notice.
9. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if ***“they consider that an application is vexatious or frivolous”***. “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 hopeless and has no reasonable prospect of success as it is incomplete and cannot succeed as things stand. 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 two requests for further information and clarification have not been answered.

**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