

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/23/2806

Parties

Landmark UK Asset Management Ltd (Applicant)
Mr Slawomir Seweryn Perzak (Respondent)

Austin Lafferty Limited (Applicant’s Representative)

Property

66 Toronto Avenue, Livingston, EH54 6BW (House)

1. By application received on 15 August 2023 the Tribunal received an application for an eviction order from the Applicant’s representative. The application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The Notice to Leave submitted in support of the application was dated 26 May 2023 and stated that proceedings would not be raised any earlier than 28 June 2023. It was accompanied by a certificate of service from Sheriff Officers dated 31st May 2023.
3. On 6 September 2023 the Tribunal wrote to the Applicant’s representative to request further information. The correspondence from the Tribunal stated *“It would appear that the notice to leave may be invalid due to insufficient notice, as it was served on 31st May 2023, but the date inserted at Part 4 is not the day after the end of the notice period, as required. If the notice to leave was served upon the Respondent before 31st May using any other method, please provide evidence of the same. If you accept that the notice to leave is invalid, please withdraw the application and serve a further notice ensuring that the correct notice period is given.”* The Tribunal received no response. On 1 November 2023 the Tribunal wrote again to the Applicant’s representative requesting evidence of a valid Notice to Leave.
4. 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”.

5. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form due to the absence of proof of service of a valid Notice to Leave. What has been produced by the Applicant’s representative does not presently comply with the requirements of section 54 of the Private Housing Tenancies (Scotland) Act 2016 in terms of the requirement to give notice. In the absence of any further information from the Applicant it is not possible for the Tribunal to determine whether the Notice has been validly served. Accordingly I do not believe the Tribunal can competently entertain the application.
6. It is open to the Applicant to make a new Application if they are in a position to satisfy the Tribunal regarding the outstanding 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.

R O'Hare

Ruth O’Hare, Legal Member