



**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 John Weldon in terms of rule 109 of the Rules.

**Case reference FTS/HPC/EV/3629**

At Glasgow on the 10 January 2024, 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 John Weldon for eviction in terms of rule 109 of the Rules. The Application was made on 16 October 2023.
2. The Application was incomplete. The Tribunal wrote to the Applicant on 16 October 2023 as follows:

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

- evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant.
- evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority.
- We cannot open the attachment “sending receipt notice to leave rent arrears.rtf.zip”. For system security reasons, we cannot open zipped files sent to us, or follow links to documents or online document storage sites. You may wish to resubmit your documents as email attachments in a different format such as .pdf or word format. Please reply to this office with the necessary information by 23 October 2023, otherwise the application may be rejected.

3. The Applicant responded on 18 October 2023 as follows:

Please find enclosed as requested the evidence of sending the notice to leave dated 17th August @ 0847am and also the section 11 form sent to NLC on the 21st September @13.15 The rent arrears as of today 18th October 2023 stand at £2700. If i can be of any more assistance please don't hesitate to contact me.

4. The in-house convenor reviewed the Application and the Tribunal wrote to the Applicant on 9 November 2023 seeking further information as follows:

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

- (1) Please provide a rent statement showing rent due, rent paid and a running total of rent arrears.
- (2) Please provide a further copy of the information on ownership as provided to us for the case FTS/HPC/EV/23/2764, as it will be necessary to include the same in the case file in this application.
- (3) The application is affected by The Cost of Living (Protection for Tenants) (Scotland) Act 2022. Please see the information in the attached letter. Please reply to this office with the necessary information by 23 November 2023. If we do not hear from you within this time, the President may decide to reject the application

5. The Applicant responded on 13 November 2023 by sending a rent statement. The Applicant also indicated that as he had served a new notice to leave given the arrears have increased.
6. The Tribunal sent a further request for information on 5 December 2023 as follows:  
Although you have failed to provide a rent statement in the format requested – rent due, rent paid and a running total of rent arrears - it seems from the information provided that the Respondent had not been in arrears for three or more consecutive months at the time the notice to leave was served, therefore, it is likely that the ground of eviction was not met. Your attention is drawn to the Upper Tribunal cases of Majid v Gaffney [2019] UT 59 UTS/AP/19/0037 and Rafique v Morgan [2022]UT07 UTS/AP/21/0037. It would seem that the relevant arrears began on 16th June 2023. When the notice to leave was served on 16th August 2023, there had not been arrears for three or more consecutive months. The date on which the ground would have been met would be 16th September 2023. If you agree with this, the application should be withdrawn.
7. The applicant did not withdraw the application and he responded on 6 December 2023 as follows:

I am extremely disappointed that the tribunal has disputed the time line of arrears, It is clear from below that she was indeed 3 consecutive months in arrears at the time the notice was served.

1 First payment missed June 16th 2023, 1 month in arrears totalling £550

2 Second payment missed July 16th 2023, 2 months in arrears totalling £1100

3 Third payment missed August 16th 2023, 3 months in arrears totalling £1650.

The notice to leave was issued after the 16th of august where it is clear that there is 3 months of arrears, we have bank statements ( attached ) confirming last payment was 25th May 2023 and no payment has been made since.

However to cover any discrepancies moving forward I issued the tenant with a new notice to leave yesterday on the grounds of 3 month consecutive rent arrears, last payment received was 25th May 2023.

It should be brought to the attention of the Tribunal that on the 16th November 2023, the arrears stood at £3300, equivalent to 6 months rent, a further notice to leave was issued on the 17th November 2023 for these grounds and is due to expire on the 18th December where arrears will stand at £3850.

If the tribunal deems my timeline to be not correct regarding the date of serving the original notice , the monetary value of the arrears cannot be debated, neither can the fact, that we have proven to the Tribunal through text messages from the tenant, that she is refusing to pay rent as punishment for not been issued a council house in June, when the initial notice to leave expired.

As the date of expiry of the latest notice to leave is the 18/12/2023 is before the reply date on your email 19/12/2023, I will submit a new application to the Tribunal on this date covering the grounds of substantial rent arrears equivalent to 6 months rent arrears. I will also submit a further section 11 form to North Lanarkshire council. I would hope that the Tribunal look at all the evidence provided and can pursue the eviction on my behalf. I would be grateful if you can confirm my timeline and whether this new application can be conjoined to this original application or whether it will need to be a stand alone application in its own right.

8. 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”***.
9. *“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 frivolous or vexatious and has no reasonable prospect of success as the notice to leave is invalid. The notice to leave was served on 17 August 2023 and rent arrears first started to accrue on 16 June 2023. Only two calendar months had therefore elapsed and ground 12 requires three months.
11. The case of Majid-v-Gaffney referred to above is exactly the same situation as this application. As noted in Stalker on Evictions at page 332:  
In that case the application to the FTT was accompanied by a notice to leave, dated 1 July 2019, which informed the tenant: *“You are in rent arrears of £1525 from rent due 30/4/19, 31/5/19 and 30/6/19. Despite repeated reminders and promises of payment, your account remains in arrears.”* The application had been rejected by the FTT at the sift, on the basis that, if the tenants were first in arrears on 30 April 2019 , they could not have been in arrears for three months until 30 July 2019. The FTT decision stated that a notice to leave could be valid only if the eviction ground specified therein was satisfied as at the date of service of the notice. If that were not the case, the result would be that the tenant could be threatened with eviction for something they had not yet done on the basis that, if they subsequently did it an application for eviction could be raised. In refusing the landlord’s application to appeal that view was endorsed by the Upper Tribunal Judge who said: *“It..’ could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to making an application”*.

12. Applying the reasoning of the Majid case, to be valid the notice to leave should have been served after 16 September 2023. The Applicant has in any event served a new notice to leave and he intends to make a new application.

**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