



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 Alan Edwards and Grace Gerstman in terms of rule 110 of the Rules.

Case reference FTS/HPC/PR/23/3769

At Glasgow on the 12 February 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 Alan Edwards and Grace Gerstman in terms of rule 110. The application was dated 25 October 2023 and received by the Tribunal on 26 October 2023.
2. The in-house convenor reviewed the application and the Tribunal wrote to the Applicant on 15 November 2023 seeking further information as follows:
 - (1) It appears that the application has been made in terms of the wrong Rule. Rule 110 relates to applications for wrongful termination orders. Civil proceedings should be Rule 111. Please confirm that you wish to amend.
 - (2) The Tribunal’s jurisdiction is limited. In relation to applications under Rule 111 the tribunal can only consider civil proceedings arising from a private residential tenancy. With reference to the 13 points in your claim, please clarify which sections of your tenancy have been breached or which aspects of the 2016 Act apply to each aspect of your claim.
 - (3) It appears that some aspects of your application relate to the repairing standard. If you are seeking an order in terms of the repairing standard a separate application must be made in terms of Rule 48 of the Tribunal Rules. The relevant application form and information regarding the process can be found on the Chamber website.

- (4) You make reference to the Letting Agent Code of practice. If you are seeking an order against the letting agent you must submit an application under Rule 95. The relevant application form and information are available on the Chamber website.
 - (5) It appears from the application that some of the remedies sought may fall outwith the jurisdiction of the Tribunal. In relation to criminal matters you should contact the police. You may also wish to take legal advice to establish if some of your claims should be raised in the Sheriff Court.
 - (6) In relation to financial claims please ensure that you have provided vouchers or receipts. Please respond within 14 days or your application may be rejected.
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3. No reply was received beyond an email from the applicant of 15 November 2023 asking if he could contact the caseworker to discuss matters.
 4. The Tribunal sent a reminder to the applicant on 28 December 2023. No reply has been received.
 5. 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”***.
 6. “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”.
 7. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The application has been made under rule 110 which relates to wrongful termination orders. The matters raised in the application are not related to a wrongful termination.
 8. 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 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.



Legal Member