



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 Mrs Nabela Rahim in terms of rule 70 of the Rules.

Case reference FTS/HPC/CV/22/2539

At Glasgow on the 23 January 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 Mrs Nabela Rahim in terms of rule 70 for civil proceedings arising out of a short assured tenancy agreement for 4b Glenachre Road North Carbain Cumbernauld Glasgow G67 2NY, ‘the property’. The application was made on her behalf by Miss Lorraine Brennan of 1-2 Let (Letting and Sales) Ltd.
2. There was a separate application for eviction proceedings.
3. The inhouse convenor reviewed the application and the tribunal wrote to the applicant’s representative on 19 August 2022 seeking a mandate authorising them to act and a rent statement.
4. No response was received to this particular request but the tribunal received an email from the applicant’s representative stating that the eviction application was to be withdrawn. The tribunal wrote on 19 October 2022 seeking clarification in connection with this application as follows:

We refer to your email of 31 August 2022 and note that the tenant has vacated the property. Please confirm whether you wish to proceed with the civil claim for payment of £2275 or whether that application is also to be withdrawn. Please reply to this request within 14 days of the date of this letter. Please reply to this office with

the necessary information by 2 November 2022. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant's representative wrote on 19 October 2022 seeking to proceed with this application but the information requested on 19 August 2022 was not submitted. Further, as the tenant had vacated the property, an address was required.
6. The tribunal sent a further request for information on 21 November 2022 as follows:

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

- (1). Please provide a current address for the respondent. If you do not have this address, please submit an application for service by advertisement together with a trace report from a tracing agent or Sheriff Officer.
- (2). As previously advised, please provide a rent statement for the period of the arrears and a mandate from the Applicant authorising you to make the application. Please reply to this office with the necessary information by 5 December 2022. If we do not hear from you within this time, the President may decide to reject the application

7. The applicant's representative replied on 21 November 2022 by providing a rent statement. She also stated that no forwarding address was available. She did not provide a mandate authorising her to act.
8. The tribunal wrote on 20 December 2022 as follows:

The tribunal notes that in your email of 21 November 2022 that you state that the tenant has absconded and you have no forwarding address.

- If you cannot provide a current address for the tenant it will not be possible for the tribunal to serve papers on the tenant in respect of any hearing relating to this application. In those circumstances you require to instruct sheriff officers to attempt to trace the tenant and if you are able to trace them to provide us with the up-to-date address.
- If sheriff officers cannot trace them then they will provide you with a report confirming same and you can then apply to the tribunal to have notice of the application served on the tenant by means of advertisement on the tribunal website.
- Can you please confirm that you have instructed sheriff officers to try to trace the tenant and let us have their report as soon as it becomes available.
- Please provide an appropriate mandate from the landlord confirming your authority to act in these matters as the representative. This has been requested previously and does not appear to have been received.
- Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to respond to this letter then the tribunal may reject your application. Please reply to this office with the necessary information by 3 January 2023.

9. The applicant's representative have not responded to this request.
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 as the essential information required for it to proceed has not been provided, despite a two detailed requests being sent by the tribunal. As things stand the applicant’s representative has not demonstrated that she is instructed in this matter. 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.
- 13.** It is open for the applicant to resubmit the application with the correct supporting documentation.

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.

L A Ward

Lesley Anne Ward

Legal Member