



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 on behalf of Ms Annette Horn in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/19/3183

At Glasgow on the 13 January 2020, 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 i

1. This is an application on behalf of Ms Annette Horn, for recovery of possession of the property at 224 Oldwood Place Livingstone EH54 6XB in terms of Rule 66 of the rules.
2. The application was made on behalf of Ms Horn by Mr Gregory Bird of BG Property Services Livingstone Limited on 7 October 2019.
3. The application was accompanied by the following:-
 1. Short assured tenancy agreement for let of the property for 6 months from 28 May 2015 until 27 November 2015.
 2. (Undated) Mandate signed by Ms Horn owner of the property, authorising BG Property Services Limited Ltd to act on her behalf.
 3. AT5 form dated 28 May 2015.
 4. Notice to quit dated 24 July 2018.
 5. S11 intimation on local authority.
 6. S33 notice dated 24 July 2019.
4. The tribunal wrote to Mr Bird on 24 October 2019 requesting further information. The letter stated:

- Please provide the s11 Notice under the Homelessness etc (Scotland) Act 2003 and proof of the recorded delivery slip of the recorded delivery slip as having been signed for.
 - Part 5 of the Form E is also blank. The Application requires to provide all parties with fair notice of the proceeding raised. Please complete this section and resubmit an amended form.
5. The application has not been amended. Mr Bird provided further information regarding the s11 notice but did not amend or complete part 5. The tribunal issued a reminder on 16 December 2019. No reply has been received.
 6. The tribunal has a duty in terms of rule 2 to proceed justly. Rule 3 provides that for the tribunal to give effect to the overriding objective the parties must assist the tribunal. The applicant's representative has failed since 24 October 2019 to comply with a reasonable request of the tribunal. Presumably the applicant is seeking to recover possession on the basis of termination of the short assured tenancy but this has not been stated on the application.
 7. 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"***.
 8. "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".
 9. I consider that this application is frivolous or vexatious and has no reasonable prospect of success as it is incomplete and does not give fair notice to the respondent of what is being sought. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept the 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