



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 Lee-Anne Fauerskov in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/23/1243

At Glasgow on the 9 August 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) (c) of the Rules

1. This is an application by Mrs Lee-Anne Fauerskov for eviction in terms of rule 109 of the Rules. The application was made on her behalf by Mr Peter Carroll on 17 April 2023 and received by the tribunal on 20 April 2023. A second application was made to recover rent arrears in terms of rule 111.
2. The application was incomplete and the tribunal wrote to the applicant’s representative on 20 April 2023 as follows:

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

- a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act
- 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 Please reply to this office with the necessary information by 27 April 2023, otherwise the application may be rejected.

3. No response was received. The inhouse convenor reviewed the application and the tribunal wrote to the applicant’s representative on 26 May 2023 seeking further information as follows:

- (1) It would appear that, at the time of serving the Notice to Leave, there may have been less than the cumulative amount of 6 months' rent arrears. 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. In the event that you accept that at the time of service of the Notice there was less than the amount of six months' rent outstanding (and not just due), please consider withdrawing your application, as it is unlikely to be accepted. You may then wish to serve a further Notice to Leave and make a further application in due course. You should be aware of the following for future applications:
 - (2) Despite a previous request, you have not provided a section 11 notice with evidence of service on the local authority.
 - (3) You have not provided evidence of receipt of the Notice to Leave, such as Track and Trace information from Royal Mail.
 - (4) You have not provided evidence of compliance with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020. You should be aware that compliance is taken into account when the Tribunal assesses whether it is reasonable to grant the order.
 - (5) The application form appears to refer to different eviction grounds to that mentioned in the Notice to Leave, and the grounds appear to be incorrect. You should ensure that any future application form reflects the correct ground(s) relied upon.
 - (6) Any future rent statement should show rent due, rent paid and a running total of rent arrears. Please reply to this office with the necessary information by 9 June 2023. If we do not hear from you within this time, the President may decide to reject the application.
4. No response has been received. A reminder was sent by the tribunal on 5 July 2023. No response has been received.
5. The tribunal can reject an application in terms of Rule 8(c) if they have good reason to believe that it would not be appropriate to accept it. The applicant's representative has failed to respond to three requests from the tribunal for further information dating back to the day the application was received. I therefore have good reason to consider that it would not be appropriate to accept this application as the applicant's representative has failed to cooperate with the tribunal in the execution of its duties. It is open to the applicant to resubmit the application with the correct supporting 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.

Lesley Anne Ward

Legal Member