



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 Harry Gould in terms of rule 109 of the Rules.

Case reference FTS/HPC/EV/23/0761

At Glasgow on the 28 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) (a) and (c) of the Rules

1. This is an application by Mr Harry Gould for eviction proceedings. The application was dated 6 March 2023 and was received by the tribunal chamber on 10 March 2023. It was originally made in terms of rule 66. It was incomplete. The tribunal chamber wrote to the applicant on 10 March 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 given to the tenant under section 33(1)(d) of the 1988 Act being served by the landlord on the tenant • evidence of the notice to quit being served by the landlord on the tenant Please reply to this office with the necessary information by 17 March 2023, otherwise the application may be rejected.

2. The inhouse convenor reviewed the application and the tribunal wrote to the applicant on 14 April 2023 seeking further information as follows:

Thank you for your application which has been passed to a legal member who has requested the further following information:-

1. You have raised this application under Rule 66 which is for an application for eviction in term of S33 of the Housing Scotland Act 1988. As the tenancy you have provided indicates the tenancy started in 2018 it is a private rented tenancy which means you need to apply under Rule 109 for eviction of a tenants under a PRT. Please advise if you wish to amend the application to a rule 109 application?

2. There appears to be a joint landlord namely Ms Pat Gould please advise if she wishes to be a joint applicant and if so please provide her full name and address.
3. You have advised you are relying on ground 1 and 1a that you wish to sell the property and for the reasons that it would alleviate financial hardship. Please provide evidence of the ground of eviction such as a letter of engagement from a solicitor or an estate agent and please also provide evidence to show why this would cause financial hardship if you continued as a landlord.
4. Please provide a dated version of the Notice to leave as it is not clear when the Notice was dated.
5. You have advised that you served the notice to leave by recorded delivery please provide evidence of posting and a track and trace receipt showing when the tenants received it.
6. Please provide a s11 notice in terms of the Homelessness Etc Scotland Act 2003 which you require to send to the local authority and evidence of service.
7. Your application is affected by the Cost of Living (Protection for tenants) (Scotland) Act 2022. Please see the attached information. Please reply to this office with the necessary information by 28 April 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. The applicant sent further information to the tribunal on 21 and 25 April 2023 stating that the application had been made under the wrong rule and that he wished to amend it to rule 109. He also stated that the joint landlord was in agreement with the application and he produced a letter from a solicitor confirming they were instructed in the sale of the property. A further detailed request for information was sent by the tribunal on 15 May 2023 as follows:

- We acknowledge receipt of your emails of 21 and 25 April 2023 in response to a request for further information. They have been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters
- Regrettably, you have not provided the information requested by the tribunal. •
- You have not provided a copy of the dated and signed version of the notice to leave. You have provided two different forms of the notice with your application, one of which does not appear to follow the prescribed format of the notice to leave required by of Section 62 of the Private Housing (Tenancies) (Scotland) Act 2016t and the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- You have not provided evidence of the receipt of the notice to leave by the tenants. •
- You have not provided a copy of the section 11 notice required in terms of the homelessness act.
- Can you please now arrange to provide these items. Without them, the tribunal cannot progress your application.
- We note that you have provided a copy of a letter from your solicitor, confirming he will be instructed to act on the sale of the property. should your eviction application be granted. We would respectfully suggest that you might find it useful to take legal advice on this application in respect of the relevant requirements for service and delivery of the notice to leave.
- 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. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

- You may wish to obtain independent legal advice on the matters contained in this letter Please reply to this office with the necessary information by 29 May 2023. If we do not hear from you within this time, the President may decide to reject the application.
4. The applicant sent a letter to the tribunal on 18 May 2023 stating the notice to leave was sent on 5 December 2022 and he stated that the attached document shows proof of posting and collection by the tenant.
 5. The tribunal sent a further email on 20 June 2023 as follows:

Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member responds as follows: You have not provided a signed and dated version of the Notice to Leave. Please do so. Please provide proof of service of the Notice to leave on the Respondent. The text you have sent simply indicates an intention to collect NOT that the Notice has been collected. Please reply to this office with the necessary information by 4 July 2023. If we do not hear from you within this time, the President may decide to reject the application.

6. The applicant replied on 21 June 2023 sending scanned copies of documents from the Royal Mail.
7. The tribunal sent a further detailed letter on 29 July 2023 as follows:

I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following:

1. As previously repeatedly requested please now provide a copy of the Notice to Leave with the date you had entered on the notice sent to the tenants and with your signature. The one you sent so far does not show the date you put on the notice in part 4 and unless you state which day was stated on the notice the Tribunal cannot establish whether it could be a valid notice. You have provided contradictory evidence so far regarding the date as you stated it was sent on 5.12.22 but the transaction slip appears to be dated 2.12.22. It is the responsibility of the Applicant to ensure that all information required is provided and provided correctly.
2. You have provided documents with your last email which cannot be read. The pictures are very small and when enlarged the text is unreadable. Can you please upload these in a different format so they can be read by the Tribunal staff. What the Tribunal is looking for is firstly the copy of the recorded delivery slip you got from the post office and secondly proof that the documents were collected and when this was done.
3. You stated the joint landlord agrees with the application. You have not stated if she wishes to become a joint Applicant, in which case you need to amend the application with her details and she also has to sign the application or whether she wants you to do this in your sole name, in which case the Tribunal needs HER to write to us to confirm that the application should proceed in the sole name of Mr Harry Gould. Please send one of these documents.
4. The S 11 notice you provided states the wrong legislation (S 19 A of the Housing (Scotland) Act 1988). Since the tenancy appears to actually be a Private Residential Tenancy please provide to the Tribunal a S 11 notice given to the local authority ticking the correct box, which refers to S 56 2 of the Private Housing (Tenancies) (Scotland) Act 2016. Please also provide evidence how and when this was given to the local authority. Please reply to this office with the necessary information by 12 August 2023. If we do not hear from you within this time, the President may decide to reject the application.

8. The applicant has not responded.
9. 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”***.
10. **“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”**.
11. 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 four detailed request being sent by the tribunal. 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 has failed to cooperate with the tribunal in the execution of its duties. The application was made in March 2023 and no progress has been made despite several detailed letters being sent by the tribunal chamber.
12. 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.

Lesley Anne Ward

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Legal Member