



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 Michael Coulburn and Mrs Janice Coulburn in terms of rule 66 of the Rules.

Case reference FTS/HPC/EV/2693

At Glasgow on the 2 October 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 Michael Coulburn and Mrs Janice Coulburn for eviction in terms of rule 109 of the Rules. The Application was made on their behalf by Tughan and Cochrane Limited on 7 August 2023.
2. The in-house convenor reviewed the Application and the Tribunal wrote to the Applicant on 29 August 2023 seeking further information as follows:
The notice to quit you have provided indicates the tenant has to leave by 26th July 2023 however the ish date of the tenancy appears to be 27th of each month following on the first ish date being 27th May 2015. Please advise why you believe 26th July 2023 is a valid ish date and therefore the notice to quit is valid if the first ish was 27th May 2015 and then the tenancy continued on a monthly basis thereafter? In order to be a valid application the notice to quit needs to be valid and it would appear this may not be a valid notice to quit. You may wish to take legal advice on this matter.

Please reply to this office with the necessary information by 12 September 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. No response has been received.

4. 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”***.
5. “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”.
6. I consider that this application is frivolous or vexatious and has no reasonable prospect of success. The notice to quit is invalid as it does not tie in with the ish date. The date given to the tenant (26 July 2023) is before the ish of the 27th of the month. Stalker on Evictions at page 59 states:

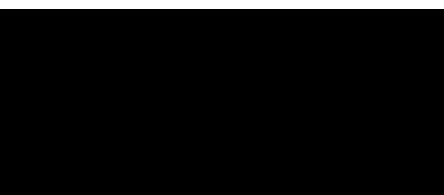
It follows that if the date stated in the notice to quit is earlier than the ish, but without any indication of why the tenant is being asked to leave early, the notice is ineffective: the landlord cannot call on the tenant to leave before the tenant is contractually obliged to do so.
7. Given the notice to quit is invalid, the contract between the parties has not therefor being brought to an end and a rule 66 Application based on the expiry of the short assured tenancy agreement cannot succeed.
8. Rule 8(1) (c) provides that the Chamber President must reject an Application if they have good reason to believe it would not be Appropriate to accept it. I consider I have good reason in this case as the notice to quit is invalid and the Applicants’ representative has failed to cooperate with the Tribunal in the execution of its duties.
9. It is open to the Applicants to make a new Application once they have served the proper notices.

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