



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 Miss Lynne Anderson terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/22/0911

At Glasgow on the 27 September 2022, 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 Miss Lynne Anderson for recovery of possession of the property at 167 Ballochney Street Airdrie ML6 0LX in terms of Rule 65.
2. The application was dated 31 March 2022 and received by the tribunal on that date.
3. The application was incomplete was first reviewed by the inhouse convenor on 21 April 2022. A request for clarification and further information was sent on that date as follows:
 - Please clarify under which rule you are applying. You state that it is rule 65 but the AT6 document does not show which of the grounds in schedule 5 of the Housing (Scotland) Act 1988 would apply. Ground 1 of schedule 5 does not match the description you used and it seems you have taken this from the Private Housing (Tenancies) (Scotland) Act 2016 rather than the 1988 Act. The end of the tenancy reason, if you were relying on the S 33 notice, would require an application under rule 66 rather than 65. Please consider amending the application.
 - You must lodge a copy of the tenancy agreement or if that is not possible provide an explanation and give all the relevant tenancy details.
 - If you are relying on a S 33 notice you must lodge the AT5 document to show that a short assured tenancy was created and evidence service of this on the tenant.

- You may wish to obtain some legal advice on the matter. The Tribunal as an independent judicial body cannot provide this. If you cannot afford a solicitor some legal advice may be available from the local CAB, a landlord association or a law clinic. Please reply to this office with the necessary information by 5 May 2022. If we do not hear from you within this time, the President may decide to reject the application
4. The applicant wrote to the tribunal on 21 April 2022 and stated that she did not have a copy of the tenancy agreement and was proceeding in terms of rule 65 as she wishes to sell her property. The applicant did not address the specific points made regarding the eviction ground or the AT5, if applicable. The applicant wrote a further email on 22 April 2022 asking: "So I need to fill out an AT5 and send it to you?" The tribunal responded by reiterating that the tribunal cannot provide legal advice.
 5. A reminder was sent by the tribunal on 10 May 2022 and the applicant responded on that date and said that she had been in touch with the housing department and it would take a week or two to locate paperwork. The applicant then contacted the tribunal on 15 May 2022 and stated the following:

Good morning, The council cannot put a specific date on when they can provide this paperwork I have therefore issues a new tenancy agreement and a new notice to quit , does the process now need to begin again or can I scan and sent these copies over to be added to my file? The new notice end date will be 12/8/22.
 6. The applicant sent in a tenancy agreement and a notice to leave to the tribunal chamber on 26 May 2022. The tenancy agreement was a model Private Residential Tenancy Agreement with an apparent start date of 12 September 2022. The notice to leave was dated 18 May 2022 and stated the application to the tribunal would not be submitted until 13 August 2022.
 7. The application was further reviewed by the inhouse convenor on 31 May 2022 and a letter was sent in the following terms:
 - You have now submitted a private residential tenancy agreement (PRT) dated 13 May 2022 and Notice to leave. Please note that it is not possible to have a PRT which started in 2013. PRTs did not start until 1 December 2017, when the legislation which introduced them came into force. If the tenancy started in 2013 than it will be an assured tenancy. The parties can agree to replace the previous tenancy with a PRT but the start date would have to be on or after the date of signing. If this is what has been agreed then you will require to amend your application to Rule 109. You will also have to provide evidence of the eviction ground and evidence that the Notice to leave has been given to the Respondents. You may also have to establish that the Notice is valid as it is dated the same date as the tenancy agreement. You will also have to establish that it is reasonable for the Tribunal to consider the application before the notice period has elapsed or withdraw the application and re-submit it after the notice period has passed.
 - If you wish the application to proceed in terms of Rule 66 (termination of a short assured tenancy) you must provide a copy of the original tenancy agreement, a copy of the AT5 and a copy of a section 33 notice which has been served on the Respondent. You will need also to ensure that the Notice to Quit which has been submitted is valid.
 - If you wish to proceed in terms of Rule 65 you should note that "landlord intends to sell" is not a valid ground for possession in terms of the Housing (Scotland) Act 1988. If you intend to proceed you must therefore submit an amended application Supported by the Scottish Courts and Tribunals Service

www.scotcourtribunals.gov.uk form, with a valid possession ground stated, a valid AT6 notice which also specifies a valid ground and a copy of the original tenancy agreement if available or as much information as you can about the tenancy (such as the start date and agreed initial term). A valid notice to quit may also be required

8. The applicant wrote a further letter to the tribunal on 24 June 2022 enclosing an AT5 and a short assured tenancy agreement.
9. The application was reviewed again by the inhouse convenor on 4 July 2022 and a letter was sent on that date in the following terms:
 - You have now submitted a short assured tenancy agreement and AT5 notice. However, you previously submitted a private residential tenancy agreement which appears to supersede the short assured tenancy. As previously advised, a landlord and tenant can agree to replace their short assured tenancy with a private residential tenancy. The PRT you have submitted suggests that this is what you and the Respondents agreed to do.
 - Please confirm whether you wish to proceed under Rule 65 (possession of an assured tenancy) or Rule 109 (eviction order in relation to a private residential tenancy). If you wish to proceed under Rule 65 you must explain why the Tribunal should disregard the PRT which has been lodged and which was signed after you issued the notice to quit.
 - Please also ensure that you have submitted the required documents which should include evidence that the relevant notices have been served on the Respondent. Please note that your application cannot be accepted in its current condition and may be rejected. You may wish to take legal advice before you respond. Please reply to this office with the necessary information by 18 July 2022. If we do not hear from you within this time, the President may decide to reject the application.
10. The applicant contacted the tribunal on 4 July 2022. She did not make a substantive response to the tribunal's letter of 4 July 2022. She stated 'The reason I submitted a different agreement was because I was not able to access my original agreement, I am happy to explain this to the tribunal if required, when I sourced the original I felt it was appropriate to send this over. However I am happy also to proceed with the other agreement if this makes it's an easier process? I fly out on holiday for two weeks tomorrow therefore I am unable to provide any further information if required within this time. Can you please advise that this will not be cancelled when I am away?' The applicant resent this email to the tribunal on 16 July 2022.
11. A further letter was sent by the tribunal on 16 August 2022 in the following terms:
 - The tribunal acknowledges receipt of your email of 16 July 2022 and notes that since that date you have provided no further information.
 - You will be aware that the tribunal has written to you on three occasions requesting specific further information. Those letters were dated 21 April 2022, 31 May 2022 and 4 July 2022.

- You indicated in your response of 16 July that you would be on holiday and unable to respond within the timescale set by the tribunal. Please confirm whether you are now able to provide the information that the tribunal has requested. Please reply to this office with the necessary information by 30 August 2022. If we do not hear from you within this time, the President may decide to reject the application.

12. The applicant contacted the tribunal on 31 August 2022 in response to this request for further information. The applicant stated: *I have spoke again with a member of staff regarding an update on this process , I have attached an email received from yourselves on the 20th July stating that they were in receipt of my emails and decisions made to move forward . I have since received emails with a letter dated the 4th of July asking for clarification? As previously stated I am happy to move forward with the application under Rule 65 as previously stated and confirmed I can give a reasonable explanation. The original tenancy was lost and I could not access from the local council. When I did access it I thought it was best to send over to us for your information. The dates will differ from the notice to quit as I had to issue a new lease agreement in order to move forward. I am more than happy to speak to any member of the tribuneral on the phone/person to explain my case. As previously stated in my email on Sunday this is starting to cause my unnecessary stress and anxiety and therefore hope this matter can be resolved quickly , as we are now nearly 12 months down the line from start of process.*
13. The applicant has failed to give a substantive response to the tribunal’s request for further information. To date the applicant has failed to produce a valid AT6 with a valid eviction ground and proof of service of the AT6.

Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if **“they consider that applications vexatious or frivolous”**. “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”.

14. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. 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 the applicant has failed to cooperate with the tribunal in the execution of its duties. The applicant has failed to respond to a reasonable requires for further information which has been outstanding since 21 April 2022 despite reminders on 31 May 2022, 4 July 2022 and 16 August 2022.


15. In accordance with the overriding objective I am rejecting this application for the foregoing reasons.

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