



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 Kenneth Doggrell in terms of Rule 110 of the Rules.

Case reference FTS/HPC/PR/22/3819

At Glasgow on the 24 April 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 Kenneth Doggrell in terms of Rule 110 for a wrongful termination order.
2. The inhouse convenor reviewed the application and the Tribunal wrote to the Applicant on 16 November 2022 seeking further information as follows:
 - (1) Please provide a copy of the tenancy agreement, notice to leave and confirmation of the end date of the tenancy.
 - (2) Please specify on what basis you consider that the tenancy was wrongfully terminated.
 - (3) You seek recovery of payments made in respect of oil. If you wish to recover such payment you must make a separate application under Rule 111. The tribunal cannot deal with your monetary claim in an application under Rule 110.
 - (4) The Tribunal note you do not wish your address to be disclosed. You have not provided sufficient grounds to persuade the tribunal that your address should not be disclosed. Your request is accordingly refused.

3. The applicant provided further information on 23 November 2022 but failed to provide his address. The Tribunal sent a further letter on 14 December 2022 indicating that the request for non disclosure of his address was refused and seeking his confirmation that he wishes to proceed. No response was received. The Tribunal sent a further letter on 18 January 2023 as follows:

In your email of 24 August you stated that the email is to be taken as your 28 days' notice and the end date of the tenancy will now be 21 September. An application under S 58 of the Private Housing (Tenancies) (Scotland) Act 2016 can only be made if the tenancy came to an end in terms of S 50 of said Act. It would appear that you gave notice and that you then left the property on the date you gave notice to. This would indicate that the tenancy came to an end not in terms of S 50 but in terms of S 48 of the Act. Please provide representations as to how the application is competent. You may wish to consider taking legal advice on the matter before you reply. Please reply to this office with the necessary information by 1 February 2023. If we do not hear from you within this time, the President may decide to reject the application.

4. No response was received. The tribunal sent a further letter on 20 February 2023 as follows:

- You have failed to respond to requests for further information issued by the Tribunal. If you wish to proceed with the application, please provide the following
- An amended application form which does not include any reference to oil or oil invoices. As previously advised, a separate application under Rule 111 would be required.
- Confirmation that the papers can be issued with your address shown. The Tribunal cannot redact documents submitted by a party and your request to exclude this information has been refused.
- The legal basis for the application. An application under Rule 110 can only be made if the tenant was misled into ceasing to occupy the property following service of a notice to leave. You have submitted a notice to leave based on ground 3 which required you to vacate on 24 October 2022. However, you have also submitted a notice issued by you stating that you intend to terminate the tenancy on 21 September 2022. Please explain why you believe that you were misled into moving out of the property.
- You may wish to take legal advice before you respond Please reply to this office with the necessary information by 27 March 2023. If we do not hear from you within this time, the President may decide to reject the application.

5. The applicant contacted the Tribunal on 22 March 2023. His comments were unclear but were suggested the applicant may wish to withdraw his application. The Tribunal sent a further letter on 23 March 2023 asking him to confirm that he was seeking to withdraw. No response has been received.

6. 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”***.
7. “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”.
8. 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 a detailed request being sent by the Tribunal, and several reminders. 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.

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 Ward

Lesley Anne Ward

Legal Member