



**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 Omar Odeh and Ms Leen Al Kallani in terms of rule 78 of the Rules.

**Case reference FTS/HPC/PR/23/2405**

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) a) and (c) of the Rules

1. This is an application by Mr Omar Odeh and Ms Leen Al Kallani in terms of rule 78 of the rules. Mr Odeh was the original applicant and Ms Al Kallani was added on 8 August 2023.
2. Mr Odeh made three application on 19 July 2023 in terms of rules 78, 103 and 110 of the rules. According to this application, the Applicants had a dispute with their landlords regarding the boiler. They were given a notice to leave and want to make a claim against the landlords for wrongful termination and in rent relief regarding the faulty boiler.
3. The in-house convenor reviewed the applications and the Tribunal wrote to the Mr Omer on 31 July 2023 seeking further information as follows:
  - (1)Your application has been made against the letting agent. Please provide an amended application with the landlord’s name and address. Please note that a care of address is not acceptable.
  - (2). Please provide a copy of the tenancy agreement.
  - (3). Your application has been made under Rule 78 which provides for compensation in situations where an order has been granted for possession in respect of protected or statutory tenancies. Please provide copy of the order granted by the Tribunal. If no order has been granted then the Tribunal does not have jurisdiction to deal with this claim.

4. Mr Odeh responded on 1 August 2023 by providing further copies of the documents he submitted with the three applications. He also provided the second Applicant's details.
5. The Applicants have not addressed the remaining matters raised in the tribunal's letter of 31 August 2023. The information that has been provided appears to relate to a claim in relation to a faulty boiler and wrongful termination of tenancy.
6. Rule 78 provides:

**Application for compensation for misrepresentation or concealment by landlord**

78. Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

(a) state—

- (i) the name and address of the former tenant;
- (ii) the name, address and profession of any representative of the former tenant; and
- (iii) the name, address and registration number (if any) of the landlord;

(b) be accompanied by—

- (i) evidence of misrepresentation on the part of the landlord; and
  - (ii) a copy of the order for possession; and
- (c) be signed and dated by the former tenant or a representative of the former tenant.

7. Section 21 of the Rent (Scotland) Act 1984 provides:

**Compensation for misrepresentation or concealment in Cases 7 and 8.**

Where, in such circumstances as are specified in Case 7 or Case 8 in Schedule 2 to this Act, a landlord obtains an order for possession of a dwelling-house let on a protected tenancy or subject to a statutory tenancy and it is subsequently made to appear to the [F1First-tier Tribunal] that the order was obtained by misrepresentation or concealment of material facts, the [F1Tribunal] may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as a result of the order.

8. The Applicants have failed to provide the essential information required in terms of rule 78. They have failed to give the landlord's name and address and a copy of the tenancy agreement (or any information regarding the terms of the tenancy). From the information that has been provided it appears that the Applicants want to pursue matters relating to a faulty boiler and the notice to leave. It does not appear that the Applicants were party to a protected tenancy or

statutory tenancy. It does not appear that any eviction had been granted by the tribunal. The applicants appear to have moved out of their tenancy voluntarily after receiving a notice to leave. Rule 78 does not therefore apply.

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 misconceived and has no reasonable prospect of success.
12. 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 Applicants have failed to provide the requested information required in terms of rule 78.

**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