



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/EV/23/4126

Parties

Mr William McBride (Applicant)

Ms Jennifer Wilkie (Respondent)

Austin Lafferty Solicitors (Applicant's Representative)

1. The application dated 17.11.23 was lodged by the applicant's solicitors with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) by email on said date. The application was accompanied by a Private Residential Tenancy Agreement between the parties commencing on 16.2.23, a S 11 notice to the Local Authority cover email dated 17.11.23 to the local authority, an affidavit by the applicant stating he required to move into the property and had hand delivered the Notice to Leave to the tenant on 4.7.23 and a document headed Notice to Leave dated 4.7.23 stating that

it gave the tenant formal notice to leave the premises occupied by them by the 26th day of September 2023 and quoting ground 4. The ground stated in the application was ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

2. On 12.12.2322 the FTT wrote to the applicant's solicitors in the following terms: "You have produced a Notice to Leave in support of the application. In terms of section 62(d) of the Private Housing Tenancies (Scotland) Act 2016 a Notice to Leave must comply with any requirements prescribed by the Scottish Ministers in regulations. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 prescribes the format and content for a Notice to Leave. The notice you have produced does not comply with the form prescribed by the 2017 Regulations. Please confirm the legal basis upon which you are relying on the Notice to Leave submitted. Please reply to this office with the necessary information by 26 December 2023. If we do not hear from you within this time, the President may decide to reject the application".
3. No reply was received.
4. On 6.2.24 the FTT again wrote to the applicant's solicitors in the following terms: "Before a decision can be made, we need you to provide us with the following: You have produced a Notice to Leave in support of the application. In terms of section 62(d) of the Private Housing Tenancies (Scotland) Act 2016 a Notice to Leave must comply with any requirements prescribed by the Scottish Ministers in regulations. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 prescribes the format and content for a Notice to Leave. The notice you have produced does not comply with the form prescribed by the 2017 Regulations. Please confirm the legal basis upon which you are relying on the Notice to Leave submitted. Please reply to this office with the necessary information by 20 February 2024. If we do not hear from you within this time, the President may decide to reject the application."
5. Again, no reply was received.
6. All file documents are referred to for their terms and held to be incorporated herein brevitatis causa.

DECISION

7. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

"Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;
(b) the dispute to which the application relates has been resolved;
(c) they have good reason to believe that it would not be appropriate to accept the application;
(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

8. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

Relevant provisions:

In terms of Rule 109 of the Procedural Rules an application must "(a) state:

- i. the name, address and registration number (if any) of the landlord
- ii. the name, address and profession of any representative of the landlord,
- iii. the name and address of the tenant, and
- iv. the ground of eviction,

(b) be accompanied by –

- i evidence showing that the eviction ground or grounds has been met;

- ii a copy of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act, and
 - iii a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act, and
- (c) be signed and dated by the landlord or a representative of the landlord.

Reasons:

9. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S 62 (1) (d) of the Act references to a notice to leave are to a notice which “fulfils any other requirements prescribed by the Scottish Ministers in regulations. “ The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 in schedule 5 as amended set out the mandatory form to be used for a notice to leave in terms of the Act. The notice given by the applicant does not conform to the statutory form set out in said schedule 5. It does not signpost the recipient to the various organisations which may be able to provide assistance, it does not state the date in part 4, which is require required in S 62 (1) (b) of the Act, the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal. The Notice to Leave document also did not provide the information regarding notice periods stated in part 4 of the statutory form. As the Notice to Leave document did not meet the requirements of the statutory Notice to Leave form defined in schedule 5 of the Regulations, the Notice to Leave was not a valid notice. The wording of the notice to leave document as prescribed by the Regulations had not been adopted in the document.
10. The notice lodged is not a valid Notice to Leave as required by S 52 (3) of the Act and thus the application was lodged without the document required for lodging as stated in rule 109 (b) (ii) of the rules of procedure.
11. It would not be appropriate for the Tribunal to accept an application which does not meet all the lodging requirements stated in rule 109, in particular here in rule 109 (b) (ii).
12. Furthermore the applicant’s solicitor had been written to by the FTT on two occasions when further information was requested and did not reply. The letters of 6.2.24 did contain the warning that if not reply was received the application may be rejected. It is disappointing that in these circumstances the applicant’s solicitors did not provide a reply

to the FTT or advise the FTT that the application was no longer being pursued. The applicant and his solicitors did not provide a reply and appear to have abandoned the application.

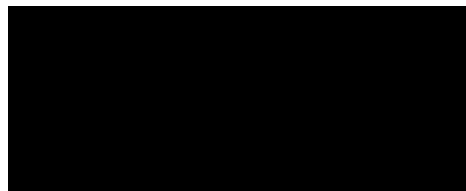
13. For the reasons stated above the application is thus rejected.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the 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 first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.



Legal Member
26 March 2024