

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland Housing and Property Chamber

Statement of Decision by the Chamber President under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedure Rules")

In connection with

Chamber Ref: FTS/HPC/RN/24/4529

Parties:

Mears Limited ("the tenant")

Ms Margaret Sayers ("the landlord")

DJ Alexander ("the landlord's representative")

Property: 1/1 209 Nithsdale Road, Glasgow G41 5EX ("the Property")

Tribunal Member: Mrs A Devanny, Chamber President

DECISION

The Tribunal rejects the application paperwork submitted by the tenant received by the Tribunal on 1 October 2024 as it is an incomplete application and furthermore is premature. The application is made under Rule 108 of The First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedure Rules"). The rejection is made under Rule 8(1) (c) of the Procedure Rules.

REASONS

The tenant in this case is seeking to make an appeal under section 28(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). This provides that

“Where a rent officer has made an order under section 25(1) in relation to the rent payable under a private residential tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.”

Rule 108 of The First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedure Rules”) states the mandatory information and documents which must be submitted to constitute an application to the Tribunal. One such document is a copy of the rent officer’s order following an application made to the rent officer.

An application cannot be made to the Tribunal until an application has been made to the rent officer and the order of the rent officer has been issued. The role of the Tribunal is to consider appeals against the rent set by the rent officer.

It is for a party to make their application and the Tribunal cannot ignore the absence of mandatory information which is required by the legislative rules. At this stage the Tribunal takes the application at its highest but it cannot be ignored that a prescribed document, namely the order made by the rent officer, has not been provided and information which must be provided has been omitted. The application was incomplete when received by the Tribunal. The paperwork submitted with the application makes clear that an application has not been made to the rent officer and no order by the rent officer has been issued. It appears that the tenant has misunderstood the procedure and has sent the application to the Tribunal. It is premature to submit an application to the Tribunal to appeal a decision of the rent officer when such a decision has not been made.

The application is at the stage of being considered under Rules 5 and 8 of the Procedure Rules. The application is accordingly rejected in terms of rule 8 (1) (c) of the Procedure Rules which states

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—.....

(c) they have good reason to believe that it would not be appropriate to accept the application.

Right of appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Mrs Aileen Devanny
Chamber President
3 October 2024