



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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 Rules”)

Chamber Ref: FTS/HPC/EV/20/0235

Re: Property at 131 Whinhall Avenue, Airdrie, ML6 0HB (“the Property”)

Parties:

**Lendrick Gillies (“the Applicant”)
Kimberley Bowman (“the Respondent”)**

Shirley Evans (Legal Member)

BACKGROUND

1. On 23 January 2020 an application dated 17 January 2020 was received from the Applicant via his solicitor under Rule 109 of the Rules, being an application by a private landlord for a Private Residential Tenancy Eviction Order in regard to a Scottish Private Residential Tenancy (“PRT”).
2. The application was not accompanied by a copy of the PRT. The application was accompanied by a copy of what was purported to be a Notice to Leave dated 20 December 2019, a schedule of arrears to 1 January 2020 together with a copy of a the Section 11 Notice under the Homelessness etc.(Scotland) Act 2003 and email to North Lanarkshire Council both dated 17 January 2020.
3. The application was considered by the Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

4. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:
 - 5.—(1) *An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*
 - (2) *The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must*

determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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;

...
(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.

5. Rule 109, governing the application, further provides:

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the 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 or grounds for 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.*

6. After consideration of the application and attachments, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

REASONS FOR THE DECISION

7. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court, [1997] EWCA Civ 1575*. 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". It is this definition that the Legal Member has considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
8. The requirement to serve a Notice to Leave upon the tenant in a PRT arises from section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. The notice is in statutory form in terms of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Regulation 6 of the 2017 Regulations states that "*A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5.*" The statutory form at schedule 5 provides a pro-forma which includes guidance notes regarding completion of the style. The guidance notes and the form thus both form part of the statutory style.
9. The applicant has used the Notice to Leave style though its completion does not follow the guidance notes. Part 2 of the Notice to Leave style reads:

*Part 2 – EVICTION GROUND(S) BEING USED
[I/We*] your [Landlord(s)/Landlord's Agent*]:*

...

inform you that if you choose not to leave the Let Property on the date shown in Part 4 of this notice, I/we intend to apply to the Tribunal for an eviction order in respect of the Let Property on the following ground(s) which is a ground(s) for eviction as set out in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016*

There then follows the various grounds in that schedule to the 2016 Act with checkboxes so the landlord or landlord's agent can indicate the grounds for eviction.

10. Part 3 of the Notice to Leave style reads:

*Part 3 - DETAILS AND EVIDENCE OF EVICTION GROUND(S)
[I/We*] also inform you that [I/we*] are seeking eviction under the above ground(s) for the following reasons:*

[State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up.]”

This is followed by several blank lines for the landlord or landlord’s agent to complete with the particulars. The form thereafter continues:

It is important that the Tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that.

[I/We] attach the following evidence to support the eviction action:*

This is then followed by a further number of blank lines for inclusion of any evidence.

11. Part 4 of the Notice to Leave style reads -

Part 4 - THE END OF THE NOTICE PERIOD

An application will not be submitted to the Tribunal for an eviction order before

_____ (insert date). This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).

12. In the Notice of Leave lodged with the application, and presumably served upon the Respondent, although there was no evidence of service lodged with the application, the applicant’s agent has completed Part 2 by ticking the boxes for “You have breached a term(s) of your tenancy agreement” (being ground 11 of schedule 3 of the 2016 Act) and “You are in rent arrears over three consecutive months” (being ground 12).
13. The applicant’s agent however has not completed Part 3 of the Notice to Leave lodged with the application. There is no reference to the breach of the tenancy agreement upon which the applicant relies upon ground 11. Further, in relation to ground 12 there is no reference to the amount of arrears or the

dates of non-payment. There is no specification as to the term or terms of the agreement breached.

14. Eviction from a PRT in terms of ground 12 requires there to be at least arrears equivalent to one month's rental payments due as at the "day on which the Tribunal first considers the application". There are further considerations of the Tribunal in regard to whether issues with benefits have resulted in the arrears arising. Implicitly, the purpose of the Notice to Leave – at least in regard to ground 12 - is not simply to initiate eviction and provide the tenant with fair notice of the threat to evict, but to provide the tenant with fair notice of the steps necessary to avoid eviction through making payment of the arrears. The statutory guidance notes clearly echo this by stating that:

"Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up." and

"It is important that the Tenant fully understands why you are seeking to evict them"

15. The applicant's agent has not completed Part 4 of the Notice to Leave lodged with the application. The Respondent accordingly has been given no notice as to when the Landlord may submit proceedings to the Tribunal.
16. In terms of Section 52(2) of the 2016 Act the Tribunal is not to entertain an application for an eviction order if it is made in breach of subsection (3). Section 52(3) of the 2016 Act requires that the Tribunal must not grant an order for eviction unless it is accompanied by "a notice to leave which has been given to the tenant". That provision must be read in terms of regulation 6 of the 2017 Regulations which states that a "notice to leave given by the landlord to the tenant under section 50(1)(a)... must be in the form set out in" the schedule to those Regulations. Any document that is not in that form is not therefore a Notice to Leave. Those Regulations require at Part 3 of the Notice to Leave for the landlord to state the breach upon which the landlord relies and in relation to arrears, the amount of arrears that has built up.
17. In terms of Section 62(1) references to a Notice to Leave are to a notice which—
- (a) is in writing,
 - (b) specifies 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,

(c)states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d)fulfils any other requirements prescribed by the Scottish Ministers in regulations.

No date has been inserted in terms of Section 62(1) (b). Further as stated above the Notice to Leave does not fulfil the other requirements for completion at Part 3. On the information currently before the Legal Member, the Notice to Leave lodged with the application is not a valid notice.

18. The Legal Member is accordingly satisfied that the current application is not supported by a valid Notice to Leave in terms of the 2017 Regulations. It fails to meet the statutory requirements and is insufficient as a basis for an application for eviction in terms of Rule 109 of the Rules. There is no power of the Tribunal to dispense with the requirements of a valid Notice to Leave.

19. For the foregoing reasons, the Legal Member does not consider there to be any prospect of success of this application and an application based on the Notice to Leave provided is rejected on the basis that the application is frivolous.

RIGHT OF APPEAL

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:-

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.

Shirley Evans

Legal Member/Chair

Date

29 January 2020.