



DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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 Procedure Rules")

Case Reference: FTS/HPC/EV/23/1609

1/1, 186 Allison Street, Glasgow, G42 8RR("the Property")

Shazia Ul Haq ("the Applicant")

Muhammad Jarjees Khilji Begum ("the Respondent")

1. The Applicant seeks an order for possession in terms of Rule 109 of the Procedure Rules and Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"). Some supporting documentation was lodged with the application, which was lodged with the Tribunal on 17 May 2023. The application was lodged on behalf of the Applicant by their representative, Atiq Ahmed ("the Applicant's representative") and all correspondence to date has been with said representative.
2. Various requests for further information have since been issued by the Tribunal. Initial requests were responded to by the Applicant's representative but did not provide the further information or documentation required by the Tribunal to enable the application to be accepted and progressed. On 29 July 2023, the Tribunal issued a request for further information in the following terms:-

"A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:

You asked what further information is required. Please note the issues below.

1. *You have still not provided a S 11 notice as requested. This would be required together with evidence of how this was given to the local authority.*
2. *You have not provided evidence that grounds 5 and 12 apply. The Tribunal had provided you with examples of how this could be done. To date nothing has been received.*

3. *The issue of the validity of the Notice to Leave depends on the entry in part 4 of the Notice to Leave and not on how much time expired between the service of the Notice to Leave and the raising of the actual application with the Tribunal. The date in part 4 of the document appears to be one day short. If you gave the tenant the notice on 26.1.23 the notice period of 84 days expires on 20.4.23. In terms of S 62 (4) of the 2016 Act the date to be entered into part 4 is the day after the notice period expires. Please provide a Notice to Leave which complies with that requirement.*

You may wish to take legal advice on the matter. You may also wish to consider to withdraw the application if the above cannot be provided and to re-submit an application once you have the necessary documents.

Please reply to this office with the necessary information by 12 August 2023. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received and the Tribunal issued a reminder dated 4 September 2023 requesting the further information required by 18 September 2023 and stating that, otherwise, the application may be rejected. Again, no response has been received.

Decision

3. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “ good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

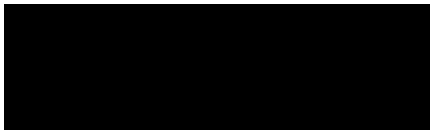
4. Rule 5 of the Procedure Rules states that an application “is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
5. The Applicant has failed to lodge documents required in terms of Rule 109, namely a section 11 Notice, evidence that Grounds 5 and 12 apply and a valid Notice to Leave, all as further detailed in paragraph 2 above. These requirements have been explained to the Applicant’s representative who has been given several opportunities to provide the documentation required or clarify the position. However they have failed to do so.
6. The Applicant has failed to comply with Rules 5 and 109 of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.



Nicola Weir, Legal Member
12 October 2023