



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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/23/2007

Re: 5 Drummond Avenue, Rutherglen, South Lanarkshire, G73 1EU ("the Property")

Parties

Ms Ellen Spring (Applicant)

Mrs Jayne McNiven (Respondent)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be rejected on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 109 on 19 June 2023.
2. The application was considered by the Tribunal and further information was requested by email of 20 July 2023 followed by reminders of 24 August 2023 and 10 October 2023.

The Applicant was requested to provide:

"Please provide evidence of the method of service of the notice to leave upon the tenant and proof that it was received.

The notice to leave (NTL) which you have provided appears to be dated 5 May 2023 and indicates you will not apply to the tribunal for an order prior to 4 June 2023. Please provide evidence that the tenant was in arrears of rent amounting to least six months' rent as at 5 May 2023.

You have not provided any rent statement which shows such evidence. It would be significantly helpful to the tribunal to have one single rent statement for the entirety of the tenancy showing the rental payments due, payments made, and a running balance either in credit or debit. The documents that you have provided do not do so.

Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) and confirm whether the NTL meets the requirements of those sections with particular regard to the effective date to be inserted into a NTL and whether it should be regarded as valid.

Can you please provide evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. What steps have been taken in conjunction with the tenant to manage arrears prior to commencing proceedings for repossession on the grounds of rent arrears.

Please provide a copy of the entire tenancy agreement.

Please also provide a copy of the required notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and evidence of delivery of same. "

The Applicant failed to respond.

Reasons for Decision

3. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;-
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

4. Rule 109 of the Tribunal Procedure Rules provides:

Application for an eviction order

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

(a)state—

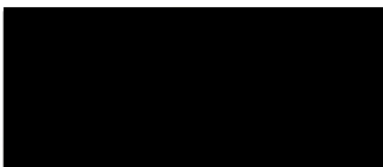
- (i) the name, address and registration number (if any) of the landlord;
 - (ii) the name, address and profession of any representative of the landlord;
 - (iii) the name and address of the tenant (if known); and
 - (iv) the ground or grounds for eviction;
- (b) be accompanied by—
- (i) evidence showing 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
 - (iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and
- (c) be signed and dated by the landlord or a representative of the landlord.

The Applicant has failed to provide necessary information such as a complete copy of the tenancy agreement, a valid Notice to Leave, evidence that the Ground relied upon has been met and a section 11 Notice along with proof of service on the local authority.

5. The Tribunal consider that this constitutes good reason why the application should not be accepted in the circumstances. The application is accordingly rejected.

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.



14 November 2023

Legal Member/Chair

Date