



**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/23/3361

Parties

Mr Sean Nisbett (Applicant)

R & G Estate Agents (Respondent)

23 Craighton Gardens, Lennoxton, G66 7NX (House)

1. On 22.9.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which indicated as the relevant rule 109. Rule 109 relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The application was completed showing as the Respondent R&G Estate Agents Ms Ina Comrie. The tenancy agreement submitted showed a Wilhelmina Comrie as the tenant and R&G Estate Agents Ltd. as the Letting Agents. Attached to the application was a Notice to Leave issued dated 9.5.23 and stating in part 4 the date when proceedings could first

be raised as 29.7.23. The Notice to Leave was given on ground 1 but no evidence of the ground applying was provided.

2. The grounds stated on the application was “looking to sell the property”.
3. The applicant provided a copy of the tenancy agreement, a Notice to Leave document and a S 11 document.
4. The FTT wrote to the applicant on 3.11.23 in the following terms: “A Legal Member of the Tribunal with delegated powers of the President has considered your application. Please provide the following1. An amended application form which correctly identifies the respondent. You have said that the Respondent is R & G Estate Agents and have not completed the section of the form which specifies the representative. 2. Confirmation that the joint owner is to be added as joint Applicant or written confirmation from her that the application can proceed in the sole name of the current Applicant. 3. A valid notice to leave which has been served on the Respondent.. The notice lodged does not appear to give the correct period of notice. 4. Evidence that the valid notice to leave was served on the Respondent and that the section 11 was sent to the Local Authority. 5. Evidence in support of the eviction ground. 6. A mandate from the Applicants. Please reply to this office with the necessary information by 17 November 2023 . If we do not hear from you within this time, the President may decide to reject the application.”
5. On 13.11.23 a Maria McNulty from R&G Estate Agents wrote to the FTT stating: I hope you can help. My colleague was dealing with this and is now off following an emergency. Is it best to re-start this based on the errors. Apologies for the inconvenience. I appreciate any help you can give.
6. The Tribunal replied on the 15.11.23 that as a Tribunal no advice could be provided and referred to the guidance notes on the website. No further reply was received. The file documents are referred to for their terms and held to be incorporated herein.

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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

REASONS FOR DECISION

1. The lodging requirements for an application under rule 109 (b) include the requirement to lodge (i) evidence that the 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, (iii) a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act
2. S 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. This must be a valid Notice to Leave. The requirement in rule 109 reflects the requirement in s 52 (3) of the Act for a Notice to Leave which has been given to the tenant to accompany the application. The applicant has also not produced any evidence of how and when the notice sent with the application was given to the tenant.

3. The Notice to Leave submitted showed as the date in part 4 of the document 29.7.23. This is less than 84 days after the day of the notice, 9.5.23. The notice period given was thus less than the 84 day period required in terms of s 54 (2) (b) (ii) of the Act. The Notice to Leave is thus not a valid notice to leave because it does not comply with the requirements set out in s 62 (1) (b) calculated in accordance with s 62 (4) of the Act. The date which should have been stated in part 4 correctly calculated would have been at the earliest 2.8.23 if the notice had been served personally on the tenant on 9.5.23 or 4.8.23 if it had been sent by recorded delivery or email in accordance with s 62 (5) of the Act. Because the Notice to Leave does not meet the requirements of s 62 of the Act the Notice to Leave is invalid and thus I consider that the application was not accompanied by the required Notice to Leave.
4. The Respondent in the application is clearly not specified correctly. The requirement in rule 109 (a)(iii) is that the application must state the name and address of the tenant. It is clear from the tenancy agreement that R&G Estate Agents were not the tenant of the property.
5. Neither the Notice to Leave nor the application were accompanied by any evidence that the eviction ground has been met. This is a requirement for a valid application in terms of rule 109 (b) (i). This has still not been produced.
6. Despite repeated requests to produce the necessary documents, these documents have not been produced.
7. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
8. 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.

Petra Hennig McFatridge

Petra Hennig McFatridge
Legal Member

11 December 2023