



Decision with Statement of Reasons of H Forbes, 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/24/2526

Re: Flat 2/1, 24 St Monance Street, Glasgow, G21 4UL ("the Property")

Parties:

Laura Strachan ("the Applicant")

Anthony Okpube; Ikechukwu Maduka ("the Respondent")

Tribunal Member:

H Forbes (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 the Tribunal has good reason to believe it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 109 on 31st May 2024 with associated documents. The Applicant was seeking an eviction order.
2. The Applicant lodged a Notice to Leave dated 1st February 2024. The Notice to Leave was not in the prescribed format. The Notice to Leave stated grounds 3 and 11, and requested the Respondents to leave by 25th April 2024, stating that the Applicant would be entitled to make an application for an eviction order on the following day. The Applicant lodged a recorded delivery postage receipt showing postage on 2nd February and a tracking report showing receipt on 5th February 2024.
3. In response to a request for clarification in respect of the fact that the Notice to Leave was not in the prescribed format and did not give the correct period

of notice, the Applicant replied 'What do I do about the Notice to Leave?' and stated that the correct period of notice was given, being 84 days.

Decision

4. 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."

5. The Tribunal determined that the application should be rejected in terms of Rule 8(c) on the basis that the Tribunal has good reason to believe it would not be appropriate to accept the application.

Reasons for Decision

6. In terms of section 52(3) of the Private Housing (Tenancies (Scotland) Act 2016 ("the Act") and Rule 109, an application must be accompanied by a copy of the Notice to Leave. The Notice to Leave must be valid and conform to the requirements of section 62 of the Act, by specifying the date on which the landlord expects to become entitled to make an application for an eviction order to the First-tier Tribunal. The Tribunal considered it was not necessarily fatal to the application that the Notice to Leave was not in the prescribed format, given the terms of section 21 of the Interpretation and Legislative Reform (Scotland) Act 2010. However, the Notice to Leave was invalidated by the fact that an incorrect period of notice was given, as the Applicant failed to add the 48 hours required for delivery by registered post when calculating the notice period, as set out in section 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The correct date to be inserted into the Notice to Leave as the date on or after which an application could be made to the Tribunal, if posting on 2nd February 2024, was 29th April 2024.
7. The Tribunal considered whether section 73 of the 2016 Act may be of assistance and whether the error in completion of the document materially affected the effect of the document. In the Tribunal's view, the error affects the

effect of the Notice to Leave, as the Notice to Leave does not give the Respondent the correct date on or after which an application could be submitted to the Tribunal.

8. The Tribunal has good reason to believe it would not be appropriate to accept the application. The application is 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.

Helen Forbes

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Legal Member/Chair

17th September 2024
Date