



**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/24/4789

Parties

Mr Gerard McAdam (Applicant)

54 Woodhall Avenue, Calderbank, Airdire, ML6 9SS (House)

1. The application dated 1.5.24 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 16.10.24 and was dated 8.10.24. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). Included with the application were a notice to leave dated 8.12.23 showing as the relevant date in part 4 3.3. 24 and various other documents.
2. On 20.1.25, following previous correspondence, the FTT pointed out that the application appears to have been raised more than 6 months after the Notice to Leave expired and asked the Applicant for representations on the matter.
3. No reply has been received.

DECISION

4. 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."

5. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

Applicable Legislation:

Private Housing (Tenancies) (Scotland) Act 2016 :

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the tenant is not occupying the let property as the tenant's home,

- (ii) that the tenant has failed to comply with an obligation under the tenancy,
- (iii) that the tenant has been in rent arrears for three or more consecutive months,
- (iv) that the tenant has a relevant conviction,
- (v) that the tenant has engaged in relevant anti-social behaviour,
- (vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

55 Restriction on applying 6 months after the notice period expires

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2) In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

REASONS FOR DECISION

1. In terms of S 52 (3) of the Act and rule 109 (b) (ii) of the Rules of Procedure an application must be accompanied by a copy of the Notice to Leave. S 55 states that for the purpose of fulfilling the requirement in S 52 (3) a Notice to Leave used cannot be used more than six months after the day on which the relevant period as set out in S 54 (2) expired.
2. In this case the Notice to Leave was dated 8.12.23 and expired on 3.3.24. The application was not made until 16.10.24 when the FTT received the application. Even if one was to take the date of receipt of the Notice to Leave as stated by the tenant, 14.12.23 as the date relevant for the calculation of the 84 day period, the 84 day period would end on 7.3.24 and again the lodging date of 16.10.24 would be outwith that period. Thus either taking the date stated on the Notice to Leave or the date of confirmed receipt, the application was not made within 6 months of the expiry of the notice period of 84 days and thus the Notice to Leave could no longer be used as a Notice to Leave to fulfill the requirement of S 52 (3).

3. It would not be appropriate for the Tribunal to accept an application based on a Notice to Leave which had expired in terms of S 55, which thus does not meet the lodging requirement of rule 109 (b) (ii) of the Rules of Procedure and the requirement for a valid application in terms of S 52 (3) of the Act.

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 McFatrige

Legal Member

6 March 2025