



**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

6 Wallace Avenue, Dundonald, KA2 9HU (the property)

Case reference FTS/HPC/EV/22/2756

Parties

Mr John Mulhern (Applicant)

Ms Tracie Lorraine Bicker, Ms Andrea Miller (Respondent)

1. The application dated 5 August 2022 was lodged by the applicant with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) by email on said date. With the application the applicant lodged a notice document with lodging email dated 31 May 2022, an AT6 document, an email headed Pre Action Requirements dated 12 July 2022, a follow up email dated 26 July 2022, a S 11 notice to the Local Authority referring to proceedings under the Housing (Scotland) Act 1988 with cover email dated 11 July 2022. The ground stated in the application was ground 8 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The

Applicant further provided a copy of a Private Residential Tenancy commencing on 3 March 2020 and in due course redacted bank statements and a rent statement showing the arrears in detail as well as other documents.

2. The Notice to Leave gave as the date in part 4 30 June 2022 and was dated 31 May 2022.
3. The ground was amended to ground 12 by email of 12 September 2022.
4. On 21 October 2022 the FTT wrote to the Applicant in the following terms: "The Notice to leave you have submitted appears to be invalid. Firstly it is not in the format prescribed by Regulations. It appears that you have added and removed text from the prescribed form. Furthermore, the date specified in section 4 is incorrect. As the Notice appears to have been sent on 31 May, the correct date should be 1 July. Please either provide a valid notice which was served on the Respondent or explain why you think the application can be considered."
5. On 2 November 2022 the Applicant replied: "Point 1 - The Notice to leave you have submitted appears to be invalid. Firstly it is not in the format prescribed by Regulations. It appears that you have added and removed text from the prescribed form. Furthermore, the date specified in section 4 is incorrect. As the Notice appears to have been sent on 31 May, the correct date should be 1 July. Please either provide a valid notice which was served on the Respondent or explain why you think the application can be considered. With regards to the notice, we prepared the notice guided by the template as we understood it. Please advise if this cannot be used for the purpose of seeking the eviction order? We believe it was made clear to the tenants the reason for seeking an end to the tenancy, the reasons and grounds for eviction within the notice. We additionally provided extra time before issuing the notification that we intended to raise proceedings in a bid to seek a resolution and worked with the local council and Ayr Housing Aid Centre to try to make a payment plan. Additionally with the notice of intention to raise proceedings we sent further communication providing information on where they could seek support, something we had previously advised and reached out to the council for. As of now the tenants have never communicated with us and arrears increase each month. With regards to the date, the legislation requests 28 days issuance was on 31st May 2022 – 28 days thereafter is 28th June. An additional 2 days for receiving the letter is 29th and 30th June 2022. The notice clearly states in the last sentence that the lease is to end on the 30th June 2022 which means the property should be empty on the 1st July 2022 itself."
6. All file documents are referred to for their terms and held to be incorporated herein brevitatis causa.

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

REASONS FOR DECISION

Relevant provisions:

In terms of Rule 109 of the Procedural Rules an 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, and
 - iv. the ground of 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
- (c) be signed and dated by the landlord or a representative of the landlord.

Reasons:

9. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S 62 (1) (d) of the Act references to a notice to leave are to a notice which “fulfils any other requirements prescribed by the Scottish Ministers in regulations. “ The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 in schedule 5 as amended set out the mandatory form to be used for a notice to leave in terms of the Act. The notice given by the applicant does not conform to the statutory form set out in said schedule 5. It does not signpost the recipient to the various organisations which may be able to provide assistance, it does not state the correct date in part 4, which requires to state, as explicitly required in S 62 (1) (b) of the Act the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal. This has to take into account the calculation of receipt as set out in s 62 (5) and falls on the date stated in S 62 (4). The correct date, as pointed out in previous correspondence, would be 1 July 2022. The date given was 30 June 2022. The Notice to Leave was not a valid notice. The wording of the notice to leave document as prescribed by the Regulations had been amended by the Applicant. The information regarding signposting of the tenants to organisations to obtain help is an essential part of the form, so is the relevant date in part 4. The date, which shows a date prior to the correctly calculated date, materially affects the effect of the document and gives incorrect information about the date when proceedings can commence, which is the essence of that part of the notice and thus S 73 Of the Private Housing (Tenancies) (Scotland) Act

2016 is not applicable. The provisions of the Coronavirus (Scotland) Act 2020 allowing the Tribunal to substitute the correct date in notice issued during the application of said Act are no longer in operation. Thus the Notice to Leave is not valid.

10. The s 11 Notice, which is a further requirement of a valid application, is not correctly completed as it states that it relates to proceedings under the Housing (Scotland) Act 1988, which is incorrect. The Applicants provided a Private Residential Tenancy commencing in 2020, which is not a tenancy to which the Housing (Scotland) Act 1988 applies.
11. The notice lodged is not a valid notice to leave as required by S 52 (3) of the Act and thus the application was lodged without the document required for lodging as stated in rule 109 (b) (ii) of the rules of procedure. The S 11 notice lodged was flawed.
12. It would not be appropriate for the Tribunal to accept an application which is not accompanied valid documents which are required by rule 109. 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.

P. Hennig McFatridge

Petra Hennig McFatridge
Legal Member
24 November 2022