

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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

20 Empire Street, Whitburn, West Lothian, EH47 0DX

Case Reference: FTS/HPC/EV/19/3837

**Mr John McIntyre, Mrs Elizabeth McIntyre, 85 East Main Street, Whitburn, EH47 0RG ("the
applicants")**

**Ms Michaela Morrison, 20 Empire Street, Whitburn, West Lothian, EH47 0DX ("the
respondent")**

On 29 November 2019, an application was received from the applicants. The application was made under Rule 109 of the Procedural Rules being an application for a Private Residential Tenancy Eviction Order. Along with the application form the applicants lodged a copy of the notice to leave and a copy of the Section 11 Notice.

By letter dated 4 December 2019 the Tribunal asked the applicants for evidence that the eviction ground had been met and evidence that the section 11 Notice had been served

on the local authority. Further, by letter dated 24 December 2019, the Tribunal requested information as to how and when the notice to leave had been served and evidence of service. The Tribunal also queried the period of notice given on the notice to leave.

An email dated 7 January was received from the first applicant advising that the 'notice to quit was hand delivered on 29 of August 2019.' The first applicant advises that his son, Stewart McIntyre, witnessed this delivery.

By letter dated 20 January 2020, the Tribunal asked:

'You have advised that the Notice to Leave was hand delivered by your son Mr Stewart McIntyre on 29th August however the date on the Notice to Leave that you have lodged is 27th September can you please clarify what date your son delivered the Notice to Leave? If you meant to say the 27th September the Tribunal notes that this would not give the required notice of 28 days plus one as the Notice to Leave mentions that an application will not be raised before 25 October. Can you please let the Tribunal have your comments on this?'

The applicants were also asked for a copy of the tenancy agreement and proof of service of the section 11 Notice.

The second applicant responded by email dated 29 January providing a copy of the tenancy agreement and a further copy of the section 11 Notice. She also advised that the notice to leave was delivered on 27th September. She also states *'Eviction notice was not served until 27th November which is more than a month after the 25th October date mentioned on the Notice to Leave.'*

The Tribunal wrote to the applicants again on 10 February 2020 asking whether the notice to leave was placed directly in the hands of the tenant or whether it was put through the letterbox of the Property on 27 September 2019. The applicants were referred to sections 54 and 62 of the Private Housing (Tenancies) (Scotland) Act 2016

("the 2016 Act") in respect of notice periods and were also asked to consider Tribunal decision FTS/HPC/EV/18/3231 and a link to this decision was attached to the letter.

The first applicant emailed the Tribunal on 18 February 2020 to say that the date given on the notice to leave was automatically populated. He also advised of further issues in connection with the tenancy, none of which are relevant to this decision.

DECISION

I considered the application in terms of section 52 of the 2016 Act Rule 8 of the Procedural Rules. Rule 8 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."

After consideration of the application together with the documents and correspondence from the applicant, I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Chamber Rules.

REASONS FOR DECISION

'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-
"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

The Tribunal finds that the notice to leave lodged with the application is not competent. Section 62 of the 2016 Act sets out the meaning of a notice to leave as follows:

"62 Meaning of notice to leave and stated eviction ground

- (1) References in this part to a notice to leave are to a notice which-*
 - (a) is in writing,*
 - (b) specifies 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,*
 - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*
 - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

- (3) *References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*
- (4) *The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*
- (5) *For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent."*

Section 54 of the 2016 Act sets out the relevant notice period for a notice to leave:

"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 behavior,*
 - (vi) *that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behavior.*
- (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)."*

Section 54(2)(b) of the 2016 Act, as set out above, states that the relevant period "*begins on the day the tenant receives the notice to leave from the landlord, and (b) expires on the day falling 28 days after it begins if subsection (3) applies*". Subsection (3) applies in this application as the tenant had been entitled to occupy the let property for less than six months at the date she is assumed to have received the notice to leave. Furthermore, the only eviction ground stated in the notice to leave is in accordance with section 54(3)(b)(iii) as stated above. However, the notice to leave is invalid as the correct date is not stated on the notice to leave in accordance with section 62(4) of the 2016 Act.

Accordingly, for the reasons outlined above, I consider that the application for an order for repossession should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Chamber Rules.

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.

Anne Mathie

Anne Mathie
Legal Member
28 February 2020