



**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/22/4287

Parties

Miss Amina Choudary (Applicant)

Mr Zafar Iqbal (Respondent)

10 Calfhill Road, Glasgow, G53 5YJ (House)

1. The application received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 29.11.22. 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 30.5.22, an S 11 Notice as required in terms of S 56 of the Act, a supporting letter and a building warrant application confirmation. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 25.8.22. The notice to leave and the s 11 notice only state the Respondent as the tenant.
2. On various occasions the FTT requested further information from the Applicant regarding

their position as to the validity of the application. The correspondence is referred to for its terms.

3. The Applicant amended the application to grounds 3 and 5, which are the grounds stated also in the notice to leave.
4. The tenancy agreements provided, one dated 1.10.19 to 31.9.20 and the other 1.10.20 to 31.9.21, left the part of the agreement defining the tenant blank but showed the names and signatures of both Zafir Iqbal (ZI) and Kishwar Naheed (KN) in the part of the tenancy agreement showing the tenant signatures. These were both witnessed on the document. The tenancy is a Private Residential Tenancy despite the proper form not having been used, as it commenced in 2019.
5. The Applicant did not specify KN as a Respondent to the application and at no point in the correspondence amended the application to include KN as a second Respondent. The Applicant confirmed on 24.4.23 that the notice to leave was only served on the Respondent ZI. She stated because she had not seen or heard of KN for some time she had assumed that KN had moved out.
6. Part of the information produced eventually with the application was an email from Govan Law Centre on behalf of their client ZI dated 18.5.22 in which the Govan Law Centre explicitly refers to the tenants being ZI and KN. This was replied to by the Applicant on 19.5.22 in an email which includes the words: "If tenants don't leave after this notice, we will have to apply to the First-tier Tribunal."
7. The Applicant confirmed on 24.4.23 to the FTT that notice to leave had only been sent by email to ZI to an email address allegedly provided by ZI, although the email address does not contain ZI's name.

DECISION

8. 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."

9. 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

10. 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."*
11. In terms of S 78 (3) of the Act :*" In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise."*
12. The tenancy agreement lodged shows no entry in the part reserved for stating the tenants of the tenancy. However, in the signature section there are clearly two signatures of tenants, referred to as tenant 1 being ZI and tenant 2 being KN. The Govan Law Centre email dated only 12 days before the date of the notice to leave refers clearly to there

being two tenants and the reply by the Applicant on 19.5.22 again refers to “tenants” – in the plural form.

13. The Applicant in correspondence initially stated that KN had only signed the tenancy in case there was a problem when ZI was not available, but the tenancy agreement makes no distinction between the tenants and does not state ZI as a Lead Tenant or allocates him any other different status from KN. It simply shows two tenants described as tenant 1 and tenant 2 having signed the agreement and thus entered into the contract. The Applicant did not provide any documents which would have allowed the conclusion that KN for whatever reason may not have been a joint tenant or that KN had given up the tenancy at any stage prior to 30.5.22. Thus the FTT considers that the tenancy agreement clearly shows that there were joint tenants, ZI and KN, as tenants to the property at the relevant time in May 2022.
14. The notice to leave was, as confirmed by the Applicant, only ever sent to ZI. No notice to leave was sent to KN and KN has not been included as a Respondent in the application.
15. In terms of S 52 (3) of the Act 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. In terms of S 78 (3) the “tenant” refers to all joint tenants where a tenancy relates to joint tenants and thus the notice to leave required to make a valid application to the FTT must have been sent to all joint tenants to be valid. Whilst it may be possible to serve a joint notice to leave on all joint tenants by entering all names on the notice to leave, as set out in para 10 of the Guidance to Landlords on the Notice to Leave “*10. If you have joint Tenants, all the Tenants must be named in Part 1 of this document or each Tenant must receive an individual copy of this notice.*”, in this case only ZI is named on the notice to leave and it is stated by the Applicant that the notice was only ever served on ZI.
16. The Applicant has thus not provided a valid notice to leave to both joint tenants with the application.
17. As the application was not accompanied by a valid notice to leave to both joint tenants, it would not be appropriate to accept the application. 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
Legal Member
24 May 2023