

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS
OF THE CHAMBER PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 (“the Chamber Rules”)

in connection with

10 Barr Crescent, Largs KA30 8PX (“the property”)

Case Reference: FTS/HPC/EV/19/0191

Mrs Kirsty Davis (“the applicant”)

Ayrshire Letting and Sales (“the applicant’s representative”)

Ms Joanna Skelton and Mr Zahoor Ashan (“the respondents”)

1. On 21 January 2019 paperwork was received by the Tribunal from the applicant via the representative seeking an eviction order. The application was made in terms of Rule 109 of the Chamber Rules which applies to an eviction under the Private Rented Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The application has with it a copy of the Notice to Leave addressed to the tenants in terms of the 2016 Act. That Notice to Leave states the grounds for eviction as “*The Landlord intends to sell the property or use for business use*”. The section of the Notice making reference to attached evidence to support the eviction action is left incomplete. The Notice requires the landlord to insert a date in the Notice to confirm the earliest date that an application can be submitted to the Tribunal for an eviction order and the date inserted in the Notice in question is 25 February 2019.

2. A letter was sent to the applicant’s representative on 21 January 2019 indicating that additional paperwork was required, namely:

Evidence showing that the eviction ground or grounds has been met; a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and



confirmation of the profession of the applicant's representative. (If a letting agent, a copy of a letter of authorisation from the applicant confirming permission to act upon the applicant's behalf was sought).

No response was received to the letter sent on 21 January 2019 by the Tribunal.

3. On 11 February 2019 the application and accompanying papers were considered by a legal member with delegated authority of the Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber and she decided that a reminder should be sent to the applicant's representative.

A reminder was sent on 12 February 2019 referring to the specific legislative provisions in Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

"Under Rule 109 as an Applicant you are required to provide evidence that the ground or ground of eviction have been met. With regard to Ground 1 you need to provide evidence tending to show that the landlord has the intention to sell including (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act

In relation to Ground 5 you need to provide evidence tending to show that the landlord has the intention of use the property as commercial purposes as stated in the application e.g. any planning permission for change of use.

We also note that you have not provided a Notice to the Local Authority as required under Section 56(1) of the Private Housing(Tenancies) (Scotland) Act 2016 or confirmation of the Applicant Representative's profession and if a Letting Agent, a letter from the Applicant confirming that they have full authority from the Applicant to act on her behalf.

We require this information by 22 February 2019. If we do not receive the required information your application may be rejected."

4. The Applicant's representative responded on 20 February 2019 in the following terms

"The tenant has advised us that we require to go through legal channels and therefore the home report if carried out shall be out of date.



Firstly our clients terms of business will only be provided to the chamber when it goes up for sale and a home report is done and we cannot do that until it is empty. The client wishes free and vacant possession to sell as putting it on the market with a tenant who is refusing to leave (as per an email yesterday) is not attractive to potential buyers

A solicitor is not required until the estate agents are in possession of an offer. Submitting the paperwork was preliminary and a potential to use the property for business use would only be considered if the property does not sell, hence why both grounds were on the submission. Only if the property was not sold would they contact the local authority.

In the first instance the information to us is that the property shall be up for sale and if does not sell only then shall a change of use be looked into.

Please note the tenant had been in the property under 6 months and despite 28 days notice applying the tenant has been supplied with 84 days notice to give them more time to find another property."

5. On 14 March 2019 the application and accompanying papers were considered by the Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber ("the Tribunal").

Decision

After assessment of the application, the attachments and submission from the applicant, the Chamber President decided that the application should be rejected on the basis that Rule 8(1) (c) of the Chamber Rules applies as there is "good reason to believe that it would not be appropriate to accept the application" in that it does not meet the prescribed requirements for a Rule 109 application.

Reasons for Decision

The Tribunal must operate within the legislative provisions of the Private Housing (Tenancies) (Scotland) Act 2016 as well as The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The relevant provision in the 2017 Regulations in relation to an Application for Eviction order in relation to a Private Residential Tenancy is contained in Rule 109. This rule lays down the requirements for such applications as follows



“109. Application for an eviction order

Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act,

the 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 (if known); and

(iv) the ground or grounds for 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

(iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable);

(c) be signed and dated by the landlord or a representative of the landlord.”

When the application was submitted to the Tribunal it lacked some of the required attachments, namely the attachments required in terms of Rule 109(b) (i) and (iii).

Rule 5 (3) allows the Chamber President or a member of the Tribunal with delegated authority to request further documents if an application is not lodged in the prescribed manner and the application will be held to have been made on the date that these documents are received. In this instance, a member with delegated authority sought the omitted attachments from the applicant’s representative and also in a letter outlined the grounds for eviction under 1 and 6 (erroneously referred to as 5) of the 2016 Act to which the Notice to Leave referred.

In response, the applicant’s representative gives no evidence showing that the eviction ground or grounds have been met at the time of lodging or consideration of the application under Rules 5 and 8. No copy notice in terms of Rule 109(b) (iii) has been lodged. The applicant’s representative gives an explanation as to why the types of evidence referred to in Grounds 1 and 6 have not been lodged but that explanation is insufficient for the purpose of complying with Rule 109(b)(i) when making an application. Rule 109(b) (i) provides that *evidence showing that the eviction ground or grounds has been met must be lodged*. The statutory provisions in Schedule 3 Part 1 at Ground 1(3) and Ground 6(3) refer to “Evidence tending to show that the landlord has the intention mentioned”. It is insufficient merely to rely on a statement of intent that the house will be sold in the future or, failing such sale, used for non-residential purposes, and some form of independent evidence to support that intention must be produced. The examples given in Schedule 3 Part 1 Ground 1 and 6 of the 2016 Act are documents to

support the intention and it is reasonable to conclude that the parliamentary intention is that documentary evidence is required to satisfy Rule 109(b)(i).

Since the prescribed attachments for making an application have not been lodged with the Tribunal, it is not appropriate to accept the application and the application is rejected.

What you should do now

If you accept the Chamber President's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President 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.



Mrs. Aileen Devanny
Chamber President
14 March 2019