



**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/23/2670

Parties

Ms Christine Branan (Applicant)

Ms Tracie Smith (Respondent)

McGoogans Coatbridge Ltd (Applicant's Representative)

169 Mavisbank Street, Airdrie ML6 0JQ (the property)

1. On 7.8.22 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109. Rule 109 relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). The ground stated on the application is "Tenant has not paid rent since 11th March 2023. Arrears balance is £3580.00 as of today's date." The application was dated 7.8.23. The following documents were provided: notice to leave dated 24.4.23 on ground 1A only stating as the date proceedings could first be raised 17.7.23.

2. The application was not accompanied by a S 11 notice, tenancy agreement and evidence regarding the application of either ground 1A or 12.
3. In letters dated 9.8.23 and 1.9.23 the FTT pointed out that for an application a copy of the s 11 notice and proof of service, evidence that the ground/s apply and a copy of the tenancy agreement would be required. No reply has been received to this last request.
4. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

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

REASONS FOR DECISION

1. The lodging requirements for an application under rule 109 (b) include the requirement to lodge (i) evidence that the 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, (iii) a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act
2. S 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. The applicant had been informed by the FTT that the notice to leave appeared to state the wrong date in part 4. The applicant was asked to consider this but no representations to explain and verify the date of the service or the calculation of the notice period were provided. I consider that taking the best scenario for the applicant and assuming the notice was personally delivered to the tenant on the date on the notice, 24.4.23, the 84 day notice period for a notice issued on ground 1A would mean that the notice period ends on 17.7.23 and the date to be entered into part 4 as prescribed in s 62(4) would have to be 18.7.23. The notice thus states the wrong date of 17.7.23. I consider this means that the notice is invalid as this is not a matter over which the FTT has discretion in terms of s52 (4). I also consider that s 73 of the Act does not provide assistance to the applicant. It is not a minor error and it does affect the effect of the notice. One of the explicit purpose of the provisions of s 62 is that the recipient must know when proceedings can first be raised by the landlord and the wrong completion of the form stating an earlier date in part 4 is an error that causes the notice to fail to achieve this purpose.
3. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents.

4. No evidence that either ground 1A or ground 12 of schedule 3 of the 2016 Act applies was included. There was no rent statement and no information about the financial position of the applicant. None of the documents suggested in ground 1A (3) of schedule 3 of the Act were provided.
5. Despite repeated requests to produce the necessary documents, these documents still have not been produced.
6. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
7. 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

2 October 2023