



**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

South Steading, Woodhead Farm, West Kilbride, KA23 9PG ("the property")

Case reference FTS/HPC/EV/22/1719

Parties

Mr Ken Nunn, Mrs Sonia Nunn (Applicant)

Mr Ruiriadh Shaw, Miss Rhona Shaw (Respondent)

1. The application dated 5.6.2022 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 7.6.2022. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). Included with the application were a notice to leave dated 27.10.2021 and the S 11 notice. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 21.1.2022.
2. On 23.6.2022 the FTT requested further information from the applicants to be provided by 7.7.2022 in the following terms: "Please provide evidence of the method of service of the Notice To Leave (NTL) upon the tenants. • Please provide a copy of the tenancy agreement to

enable the tribunal to be satisfied that the method of service of the NTL upon the tenant is competent • Please confirm that each of the joint tenants was separately served with a copy of the NTL • It is noted that the date you have included in the NTL as the earliest date that Tribunal proceedings can be raised is 21 January 2022. The Notice itself appears to be dated 27 October 2021. Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 and particularly sections 54(2), 62(4) and 62(5) of that Act (as amended at that time by the Coronavirus (Scotland) Act 2020 and subsequent provisions) and confirm whether the NTL meets the requirements of those sections with particular regard to the appropriate period of notice and whether it should be regarded as valid • Part 3 of the NTL which you have served upon the tenant does not appear to provide any evidence supporting the proposed eviction ground. Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 and particularly sections 50 and 62(1) of that Act together with The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and confirm whether the NTL meets the requirements of those sections and whether it should be regarded as valid.”

3. No reply has been received to date.

DECISION

4. 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."

5. 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

6. 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 S55 *"(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 more than six months after the day on which the relevant period in relation to that notice expired.(2)In subsection (1), "the relevant period" has the meaning given in section 54(2).(3)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)."*
7. Rule 5 (3) of the FTT's rules of procedure states: *"(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement."*
8. The notice to leave relied on ground 5 of schedule 3 of the 2016 Act and was dated 27.10.2021.
9. S 54 (2) applicable to notices to leave served after 3 October 2020 then sets out the relevant notice periods. For a notice to leave relying on ground 5 of schedule 3 of the Act S 54 (2)(c) (ii) provides that the notice period is 3 months. This would then be 29.1.2022

if the notice to leave was sent.

10. S 64 of the Act defines a 6 months period as a period *“which ends in the month which falls six months after the month in which it began, either – (a) on the same day of the month as it began, or (b) if the month in which the period ends has no such day, on the final day of that month.”*
11. The notice to leave was wrongly calculated on the basis that the notice expired on 20.1.2022, thus giving the date on which proceedings could first be raised 21.1.2022. However, this, as set out above, was not the correct expiry date of the notice.
12. In terms of regulation 4 of The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2022, paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 continues to apply for notices to leave served prior to 30.3.2022. Paragraph 10 provides:
Errors in notices
*“10(1)Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—
(a)the notice is not invalid by reason of that error, but
(b)it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.
(2)Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.
(3)This paragraph applies to—
(a)a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,.... while this paragraph is in force.”*
13. The FTT considers that correctly applying the relevant provisions, the expiry date of the notice period for the notice to leave was 29.1.2022, namely 3 months after the notice to leave had been received by the tenant if sent on 27.10.2021. In terms of S 55 the landlord may not make an application to the FTT for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired. The date six months after the notice period expired was 29.7.2022 and to be valid an application would have had to have been lodged with

the FTT on or before that date.

14. The FTT had requested further information in the letter of 23.6.2022 and this has not been provided. In terms of rule 5 (3) of the rules of procedure the application remains held to be not completed at this stage. Furthermore, the application was not accompanied by evidence that the ground stated in the application was met and thus does not meet the lodging requirement set out in rule 109 (b) (i) of the rules of procedure. The application as at 10.8.2022 remains incomplete. The period during which the application could be made in terms of S 55 (1) has now expired. In terms of S 55 (1) of the Act it would not be appropriate for the Tribunal to accept an application based on a notice to leave for which the notice period had expired more than 6 months prior to lodging the application. As at 10.8.2022 it is no longer possible to make a valid application based on the notice to leave submitted for the reasons stated above.

15. 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
10 August 2022