



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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

Chamber Ref: FTS/HPC/EV/23/1353

Re: 11 Riverside Court, Rattray, PH10 7BG (Property)

Parties

M Adrian Pyne (Applicant)

Mr Jason Sturrock (Respondent)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 109 on 26 April 2023.
2. The application was considered by the Tribunal and further information was requested by letter of 7 June 2023 as follows:

“Before a decision can be made, we need you to provide us with the following: 1. The Notice to Leave appears to be invalid, as the date inserted at part 4 is a day earlier than that required. The notice period is 28 days, plus a further 48 hours for service, presuming that service was made by email, as agreed between parties in the tenancy agreement. The date to be inserted is the date after the notice period has ended. Please consider withdrawing the application and serving a further notice with the

correct date and notice period. You may wish to take suitable advice to ensure that you complete the Notice to Leave correctly. You should also be aware of the following:

2. Any Rule 109 application must be accompanied by: (i) Evidence of service of the Notice to Leave upon the Respondent, (ii) A copy of the section 11 notice served on the local authority as required by section 56 of the Private Housing (Tenancies) (Scotland) Act 2016, and evidence of service of the notice upon the local authority. (iii) Evidence to support the ground of eviction. In this type of application, we would expect to see a rent statement showing rent due, rent paid and a running total of rent arrears.
3. You should also submit evidence to show that you have complied with Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020, if available. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant an eviction order.
4. Please see the information in the attached letter regarding The Cost of Living (Protection for Tenants) (Scotland) Act 2022. Please reply to this office with the necessary information by 21 June 2023. If we do not hear from you within this time, the President may decide to reject the application."

No response was received.

Reasons for Decision

3. The Tribunal considered the application in terms of Rule 8 of the Chamber 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;·*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

(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."

4. Rule 109 of the Tribunal Procedure Rules provides:

Application for an eviction order

109. 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), and

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

The Applicant has failed to provide necessary information. In particular, the Applicant has failed to provide proof of service of a valid Notice to Leave on the Respondent and a section 11 Notice on the local authority. The Tribunal could not grant the order sought without this information.

5. The Tribunal accordingly consider that there is good reason why the application should not be accepted. The application is accordingly rejected.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

A Strain

20 July 2023

Legal Member/Chair

Date