



**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/22/1576

4 Linlee Court, Rochsolloch Road, Airdrie, ML6 9BD (the property)

Parties

Danatec LTD (the applicant)

Mr Stephen Joseph Kennedy (the respondent)

1. The application for an eviction order in terms of Rule 109 of the Procedural Rules was received by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) on 25 May 2022 stating in part 5: "Notice to Leave given 31/3/22 Rent arrears - £2965.05 Ground 8".
2. The documents lodged with the application were: copy of a Notice to Leave dated 31 March 2022, a tenancy agreement commencing 8 January 2020 between the parties over the property and a rent statement.
3. On 13 June 2022 the FTT wrote to the applicant requesting the following information by 27 June 2022: "1. You have stated in the application form that the application is made under ground 8. This does not appear to be correct. Please provide an amended page of the application form to show the correct ground, which would appear to be ground 12. 2. You have not provided a section 11 form as required in terms of section 56 of the Private Housing

(Tenancies) (Scotland) Act 2016. Please provide a copy of the section 11 form and evidence of service of the form upon the local authority. 3. Please provide evidence of service of the Notice to Leave upon the Respondent. 4. Please provide an up to date rent statement. 5. Please confirm whether you have complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and provide evidence of this, if possible. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant the order.”

4. As of 27 July 2022 no copy of the notice to the local authority as per S 56 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) has been lodged.
5. No answer was received and no further documentation submitted.

DECISION

1. 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."

2. 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.

Relevant Legislation

Application for civil proceedings in relation to a private residential tenancy

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; 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

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

REASONS FOR DECISION

1. S 56 of the 2016 Act specifically states "A landlord may not make an application to the First-tier Tribunal for an eviction order against the 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. Notice under subsection (1) is to be given in the manner and form prescribed under section 11 (3) of the Homelessness etc. (Scotland) Act 2003. " The required notice has not been provided and thus the requirement for a valid application to the FTT set out in S 56 of the 2016 Act has not been complied with. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. This was not provided.
2. The applicant did not provide the requested information on how and when the Notice to Leave was given to the tenant. This is required in order to determine whether the date

stated in part 4 of the Notice to Leave has been correctly calculated and stated. It was not possible for the Tribunal to establish if a valid Notice to Leave had been lodged as required by Rule 109 (b) (ii) as no evidence supplied as to when this was served.

3. Ground 8 of schedule 3 of the 2016 Act relates to the following: "It is an eviction ground that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee". In terms of Rule 109 (b) (i) no evidence has been provided that the eviction ground stated in the application, ground 8, has been met. The FTT gave the Applicant the opportunity to amend the application if he considered another ground applied but he has not done so.
4. The FTT had given the applicant the opportunity to lodge the missing documents. He has not done so.
5. Given that the application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules, it would not be appropriate for the Tribunal to accept the application.
6. The application it is therefore 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
27 July 2022**