



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/23/3303

Re: 188 Moss Avenue, Caldercruix, Airdrie, ML6 7PW ("the Property")

Parties

Mr Allan Whittaker (Applicant)

Mr Daniel McAulay (Respondent)

K Property (Applicant's Representative)

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 rejected 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 19 September 2023.
2. The application was considered by the Tribunal and further information was requested by email of 11 October 2023.

The Applicant was requested to provide:

“We write further to your email of 20 September in which you state “my application is not for an eviction order, this tenant has left the property this is for a Court Order for rent arrears.” You have submitted an application under Rule 109 seeking an order for eviction on the basis of rent arrears. If this is no longer required you will require to withdraw that application. If you are seeking an order for payment, you will require to submit a new application under Rule 111. Please confirm if you wish to withdraw the current application which has been submitted under Rule 109, and please do so within 14 days. Please reply to this office with the necessary information by 25 October 2023. If we do not hear from you within this time, the President may decide to reject the application. “

The Applicant failed to respond.

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 confirmed that the Respondent has vacated the Property. The eviction order is unnecessary.

5. The Tribunal consider that this constitutes good reason why the application should not be accepted in the circumstances. 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.

Alan Strain

15 November 2023

Legal Member/Chair

Date