



**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/23/3388

Parties

Jock Bros Ltd (Applicant)

Mr Robert Rice (Respondent)

14B Waterside Street, Largs, Ayrshire, KA30 9LN (House)

1. On 26.9.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which indicated as the relevant rule 109. Rule 109 relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016. The applicant thereafter produced a tenancy agreement, which showed that the tenancy commenced on 1.6.2023.
2. The grounds stated on the application were grounds 10, 14 and 15.
3. The applicant provided a copy of the tenancy agreement, a letter dated 9.6.2023 headed Notice to Leave, which did not comply with the requirements of a Notice to

Leave document which was not in the format and did not contain the content of the prescribed form listed in schedule 5 of The Private Residential Tenancies (Prescribed Notices and Forms) Regulations 2017 as amended in that it did not contain the relevant advice boxes, did not show the date the landlord could apply to the First-tier Tribunal and did not provide the notice periods. It was a simple letter stating the recipient should leave the premises by 6 September 2023 and that the ground for the notice was ground 14 because of “various occasions reported to NAC”. No other grounds were mentioned on the letter.

4. This was raised with the applicant by the FTT and the applicant was also asked on two occasions to provide the S 11 notice and proof of how this was given to the local authority. He replied initially on 4.10.2023 sending a copy of a letter he had written to the local authority, which stated the name of the tenant and the ground why the landlord was seeking eviction but did not provide all the information required on a S 11 notice.
5. No notice to leave in terms of s 62 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) was produced. No S 11 notice was produced.
6. On 7.11.2023 the applicant sent an email explaining the situation somewhat further but not submitting any additional documents.
7. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

8. 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."

- 9. 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.
3. No formal Notice to Leave which would meet the requirements of such a document has been produced. The letter lodged did not contain the necessary prescribed information and did not give the required 28 days notice period as stated in S 54 of the 2016 Act. It was sent recorded delivery on 9.8.2023 and stated as the date the tenant was supposed to leave the property as 6.9.2023. I find thus that it was not a Notice to Leave in terms of S 52 of the 2016 Act.
4. 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. I find that the document produced was not a S 11 notice in terms of the legislation.

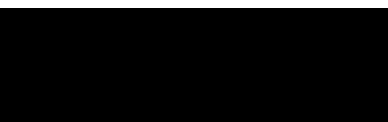
5. Despite repeated requests to produce the necessary documents, these documents still have still not been produced.
6. The Tribunal notes the urgency described by the applicant to have this matter dealt with and the applicant may wish to obtain legal advice, which would assist in ensuring that any further application he makes complies with the formal requirements of such an application. The Tribunal is bound by the legislation, which states the relevant requirements. The Tribunal was mindful of the overriding objective stated in rule 2 of the Rules of Procedure. However, ultimately it is the responsibility of the applicant to produce the documents required to make an application as stated in the 2016 Act and despite repeated attempts of the Tribunal to alert the applicant to the lack of these documents he did not produce these.
7. 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.
8. 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

27 November 2023