

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Case reference FTS/HPC/EV/23/3500

Parties

Robert Brown (Applicant)
Jennifer Elliot (Respondent)

10 Priory Terrace, Netherton, Wishaw, ML2 0BN (House)

1. By application received on 3 October 2023 the Tribunal received an application for an eviction order from the Applicant. The application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The application was incomplete. On 3 November 2023 the Tribunal wrote to the Applicant in the following terms:-

“Before a decision can be made, we need you to provide us with the following:

1. You have not provided a tenancy agreement in relation to Jennifer Elliot. Please explain why it is not available and provide as much detail as you can about the tenancy agreement, including the parties to the agreement, the commencement date and the rent payable. It is not clear from the forms produced whether this is a short assured tenancy or a private residential tenancy. We need this information so that we can check the validity of the notices you have produced. The section 11 notice served on the local authority indicates that the tenancy started on 10 October 2018, but you have ticked the box relating to tenancies under the Housing (Scotland) Act 1988. If this is a private residential tenancy, you will need to serve a corrected section 11 notice on the local authority, referring to the correct legislation.

2. Please confirm which ground of eviction you wish to rely upon. The application form refers to ground 10, but the notice to leave refers to ground 1.

3. Please provide a full copy of the notice to leave.

4. You have not produced any evidence of service of the notice to leave on the respondent. Please provide evidence showing when and how the notice to leave was served.”

3. On 8 November 2023 the Tribunal received a response from the Applicant. In summary the Applicant advised that there was no tenancy agreement with the current tenant and provided a letter headed "Notice to Quit" together with a section 11 notice and evidence of service. No evidence of service was provided for the Notice to Quit.
4. On 30 November 2023 the Tribunal wrote again to the Applicant in the following terms:-

"Before a decision can be made, we need you to provide us with the following:

1. You must provide the information regarding the tenancy agreement. When did this start and if it did start prior to 1.12.2017 what conditions were agreed regarding occupancy, rent, deposit and duration.

2. If the respondent took over the lease, when was this and what was agreed. The Tribunal requires a date to be able to ascertain which type of tenancy this may be and, accordingly, which type of notices are required.

3. If this is a Private Residential Tenancy the Notice to Leave would not be valid as it does not comply with the statutory requirements for such a notice in terms of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Please thus if you consider rule 109 applies, which is what you state on the application, provide a valid Notice to Leave and proof of service.

4. If it is a tenancy under the Housing (Scotland) Act 1988 you would have to amend the application to show the correct rule and provide the required documents, including a Notice to Quit for the correct ish date. The notice you have lodged is not a valid Notice to Quit as it does not provide the information in terms of the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended for a valid Notice to Quit. If you consider it is an Assured Tenancy please provide the valid relevant Notice to Quit and either the AT5 document and S 33 notice and proof of service or the Notice to Quit and appropriate AT6 notice and proof of service.

5. The AT6 form on its own could only be used if you can evidence that the tenancy is an assured tenancy under the Housing (Scotland) Act 1988 and the tenancy agreement made provision for the tenancy to be brought to an end on the ground in question. For that you would have to be able to show what was in the original tenancy agreement.

6. You state the ground is ground 10. This cannot be correct as in terms of the Housing (Scotland) Act 1988 ground 10 only relates to a situation where the TENANT has given notice and then does not move out.

You are strongly advised to obtain legal advice in the matter before you reply to this request. If you agree that the above is correct you may wish to withdraw the application and lodge a fresh application once you are able to provide all the necessary documents.

In all the circumstances you are given a further 14 days to amend the application and provide the necessary documents for a valid application, otherwise the application will have to be rejected. It is the responsibility of the Applicant to ensure that all necessary documents required under the applicable rule are provided.

Please reply to this office with the necessary information by 14 December 2023. If we do not hear from you within this time, the President may decide to reject the application."

5. The Tribunal received no further response from the Applicant.

Decision

6. The circumstances in which an application is to be rejected are governed by 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;

(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."

7. After consideration of the application and the lack of any further correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

Reasons for Decision

8. The Applicant was given the opportunity to provide further information by way of the requests from the Tribunal on 3 November 2023 and 30 November 2023. As at the date of this decision there has been no further response from the Applicant. This additional information requested was necessary to allow the application to proceed. The Applicant has failed to provide a valid notice that could be relied upon in pursuance of an eviction order. The Applicant was warned that failure to respond may lead to the application being rejected. In the absence of any response from the Applicant it would not be appropriate to accept the application and it should therefore be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Ruth O'Hare, Legal Member

16 January 2024