



Decision with Statement of Reasons of H Forbes, 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/CV/23/0044

Parties:

Orrion Property Ltd. ("the Applicant")

James McKenzie ("the Respondent")

Tribunal Member:

H Forbes (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) of the Procedural Rules.

Background

1. An application for an eviction order was made under Rule 109 on 5th January 2024 and lodged with associated documentation.
2. A Legal Member of the Tribunal considered the application and a letter was sent to the Applicant requesting the following information on 8th February 2024:

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

1. You say in your application that you have lodged a notice to leave and proof of service. The document you have lodged is not a notice to leave and cannot be used in support of this eviction application. If you have served a valid notice to leave please provide this. Alternatively please withdraw the application and resubmit it when you have served a valid notice to leave. If you cannot produce a valid notice to leave and proof of service the application will be rejected.



2. Please provide proof of service of a valid notice to leave.

3. Please provide a copy of the notice given to the local authority in terms of section 56 of the Private Housing (Tenancies)(Scotland) Act 2016 and proof of service.

4. Please provide evidence of the eviction ground. You have provided a document which is headed "On 18 October 2023" and there are various links embedded in that documents. We cannot access the documents embedded. Please provide evidence that you intend to refurbish the property the form of any planning permission or a contract with an architect or builder.

Please reply to this office with the necessary information by 22 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 9th February 2024, the Applicant responded. It was clear from the response that a valid notice to leave was not served upon the Respondent, and no section 11 notice, as required in terms of section 56 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") was lodged by the Applicant. No further evidence to support the ground of eviction was lodged.
4. The application was considered by a Legal Member on 6th March 2024.

Reasons for Decision

5. 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."



6. In terms of section 62(1)(d) of the 2016 Act, a notice to leave must fulfil the requirements prescribed by Scottish Ministers. The form of notice is set out in schedule 5 to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The notice served by the Applicant upon the Respondent dated 18th October 2023 does not constitute a valid notice to leave. It is not in the correct form and it does not contain the information required by section 62 the 2016 Act. Furthermore, it incorrectly refers the Respondent to the Housing (Scotland) Act 1988, despite the relevant tenancy being a private residential tenancy.
7. The Applicant has failed to provide the notice required by section 56 of 2016 Act which provides that
 - (1) A landlord may not make an application to the First-tier Tribunal 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.
 - (2) 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.
8. Section 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. 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.
9. Insufficient evidence has been lodged to support the application, as required by Rule 111.
10. There is good reason to believe it would not be appropriate to accept the application. 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.

H Forbes

6th March 2024

Legal Member/Chair

Date