



**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

Property at 23 Ledmore Place Falkirk, FK1 2RE or 30/7 Burghmuir Court Linlithgo EH49 7LJ

Case Reference: FTS/HPC/EV/20/0846

**David Barnes and Fiona McRobbie c/o RGM Solicitors (sic) Grangemouth ("the applicant")
Greg Paterson 23 Ledmore Place, Falkirk, FK1 2RE (sic) possibly correct address 30/7
Burghmuir Court Linlithgo, EH49 7LJ ("the respondent")**

1. On 9 March 2020 the application dated 20 February 2020 was lodged by the applicants' representatives RGM Solicitors with the First-tier Tribunal for Scotland Housing and Property Chamber (the Tribunal) by email. In the application the applicants are designed as residing c/o RGM Solicitors Grangemouth and the respondent is designed as residing at 23 Ledmore Place, Falkirk FK1 2RE.
2. The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the

Act). The following documents were lodged in connection with the application:- Tenancy Agreement for the tenancy commencing on 30 August 2019 for the property at 30/7 Burghmuir Court Linlithgo EH49 7LJ, Notice to Leave dated 8 December 2019 to the respondent at the address of 30/7 Burghmuir Court Linlithgo, EH49 7LJ and service confirmation by Sheriff Officers of service of same on 6 December 2019, rent statement covering the period from 30 August 2019 to 30 January 2020. The documents referred to above are referred to for their terms and held to be incorporated herein.

3. The Tenancy agreement lodged shows the landlord in terms of the Private Residential Tenancy agreement are the applicants in this case. The respondent is the tenant of the property at 30/7 Brughmuir Court Linlithgo, EH49 7LJ. No documentation of a tenancy agreement for the property at 23 Ledmore Place Falkirk FK1 2RE, which is given as the current address of the respondent was provided. The tenancy commenced on 30 August 2019 with a rental charge of £380 per month.
4. Clause 8 states that the first rental payment is due on 30 August 2019 for the period to 30 September 2019 and payments are thereafter due on the 1st day of each month for the month in advance.
5. The Notice to Leave is dated 8 December 2019 and in terms of Part 4 of the Notice to Leave the first day on which proceedings can be raised with the First tier Tribunal Housing and Property Chamber is stated in the Notice to Leave as 8 January 2020. The date of service by Sheriff Officers is stated as 6 December 2019
6. The ground/s of eviction referred to in the Notice to Leave and the application is/are: ground 12 of schedule 3 of the Act.
7. In part 3 of the application it is stated: "As per section 8 of your Private Residential Tenancy Agreement you are required to pay your monthly rent of £380 on the 1st of each month. You will see from the list below we have not received the following payments as required: Rent arrears – non payment of rent as follows: 1st October 2019 £380 not

received, 1st November 2019 £380 not received, 1st December 2019 £380 not received
Total arrears £1,140. I attach the following evidence to support the eviction action: Rental statement, email communication. " No email communication was attached to the application. The rental statement attached to the application covers the period of 30 August 2019 to 30 January 2020 and shows that the rent for the period of 30.9.2019 to 29.10.2019 was paid on 8 October 2019 setting the outstanding balance as of that date to £0. New outstanding rent arrears are shown to commence on 30 October 2019.

8. On 11 March 2020 the Tribunal had written to the applicants' solicitors as follows: "The following further information is required from you before your application can proceed to the Chamber President for consideration:

- A COPY OF THE NOTICE GIVEN TO THE LOCAL AUTHORITY AS REQUIRED UNDER SECTION 56(1) OF THE 2016 ACT
 - EVIDENCE THAT THE NOTICE TO THE LOCAL AUTHORITY UNDER SECTION 56(1) OF THE 2016 ACT HAS BEEN SERVED TO THE LOCAL AUTHORITY
9. No reply has been received.

DECISION

10. 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."

11. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

Relevant legislation:

Rule 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 [\[F72\]](#) (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
- iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

S 52 of the Act states: Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

S 54 of the Act states: Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the tenant is not occupying the let property as the tenant's home,

(ii) that the tenant has failed to comply with an obligation under the tenancy,

(iii) that the tenant has been in rent arrears for three or more consecutive months,

(iv) that the tenant has a relevant conviction,

(v) that the tenant has engaged in relevant anti-social behaviour,

(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

S 56 of the Act states: Restriction on applying without notifying local authority

(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.

(3) In a case where two or more persons jointly are the landlord under a tenancy, references in subsection (1) to the landlord are to any one of those persons.

12. I consider that the lodging requirements in terms of Rule 109 a and b are not met for the following reasons:

13. The application does not give the actual address of the applicants and only provides a c/o address of "c/o RMG Solicitors Grangemouth". This is not sufficient and would not meet the lodging requirements.

14. The application is not accompanied by a copy of the Notice given to the local authority as required under section 56 (1) of the 2016 Act and Rule 109 (b) (iii). The Tribunal had written to the applicants' representatives on 11 March 2020 requesting that this be lodged and no reply has been received to date. Without this the application is incomplete. The lodging requirements in terms of Rule 109 are not met and in terms of S 56 (1) of the Act no application to the Tribunal may be made without having given such notice. In the absence of any evidence of such a notice having been given the application was not validly made.

15. I consider that the requirement in s 52 (3) of the Act and Rule 109 (b) (ii) of the Procedure Rules is not met in this case. The Tribunal can only entertain an application if it is accompanied by a Notice to Leave. I consider that this requirement means that a valid Notice to Leave has to be submitted with the application.

16. In this case the Notice to Leave was dated 8 December 2019. How this could have possibly been served on 6 December 2019 on the respondent given that this date falls 2 dates before the date on the Notice to Leave is a mystery which the applicants have not explained. Even if one assumes that the date on the Notice to Leave may have been erroneously stated as 8 December 2019 it is clear that dated either 8 or 6 December 2019 the Notice to Leave cannot possibly be valid for the following reasons:

17. Ground 12 (1) of Schedule 3 of the Act requires the following: "12 Rent Arrears (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months." Sheriff I Fleming in the Upper Tribunal decision [2019] UT 59 Abdul Majid v Adele Gaffney and Andrew Robert Britton of 17 October 2019 stated in para 9" ... *It is clear from the terms of the Notice to Leave that ground 12 is being relied upon; as at the*

date of the Notice to Leave the tenant must have been in rent arrears for three or more consecutive months. Therefore, if the tenant was first in arrears of rent as at 30 April 2019 then the expiry of the three months period would be 30 July 2019. As at 1 July 2019 the tenant was not in rent arrears for three or more consecutive months. The tenant must have been in arrears for the specified period of time, not simply owing rent. Ground 12 does not apply as at the date of service of the Notice to Leave. " and in para 14: "... It is clear that the words "expects" relates to the date on which the application will be made. That is entirely distinct from the eviction ground. The statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not it is invalid. If it is invalid decree for eviction should not be granted. The decision of the First-tier Tribunal sets out the position with clarity. It could in my view it could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to the making of an application. Such an approach would be open to significant abuse. Either the ground exists at the time when the Notice to Leave is served or it does not. If it does not the Notice to Leave is invalid and it cannot be founded on a as a basis for overcoming the security of tenure....." This clearly sets out that the requirement of a valid Notice to Leave is that at the time the Notice to Leave is served the ground on which the notice is based must exist.

In terms of the Notice to Leave however ground 12 clearly requires three months consecutive rent arrears. The dates for arrears are defined as 1. October 2019, 1 November 2019 and 1 December 2019. The rent statement shows that there were no rent arrears between 8 October 2019 and 30 October 2019. However, even if there had been arrears commencing on 1 October 2019 the three months consecutive arrears would only be in place by 1 January 2020 and not by the date on the Notice to was actually served on 6 December 2019 as this pre-dates 1 January 2020. In fact, applying the information in the rent statement lodged, 3 months consecutive arrears would only be in place on 30 January 2020, counting 3 months from the first date of arrears on 30 October 2019. As at 8 December 2019, the date on the Notice to leave, or 6 December 2019 the date the Notice was actually served by Sheriff Officers, the tenant cannot have been in arrears for three or more consecutive months given that last period of consecutive arrears only started on 30 October 2019. Applying the reasoning of the Upper Tribunal as set out above it is clear that at the time the Notice to Leave was served

the conditions for ground 12 did not yet exist. The Notice to Leave is thus not valid.

18. Finally, the application is lacking in specification. The only information about the property to which the application relates is usually provided to the Tribunal in form of the address of the respondent, who, still occupying the property, is residing at the address for which an order would be sought. In this case the address of the respondent is given as 23 Ledmore Place, Falkirk FK1 2RE. No tenancy agreement for this property has been lodged. There is actually no evidence that the respondent is a tenant of that property at all. The application does not specify the address or property to which the application relates other than stating the address of the respondent. Should this be the correct address, no evidence of a tenancy between the applicants and the respondent for this property was provided. Should this not be the correct address and the property for which an eviction order is sought in fact be the property for which a tenancy agreement was lodged, namely 30/7 Burghmuir Court, Linlithgo EH49 7LJ, then the address of the respondent is not stated correctly and thus the application does not meet the requirement in Rule 109 (a) (ii). Either way it is not clear for which property an order for eviction is being sought and the lodging requirements are not met in that regard.
19. For the reasons stated above the application was not validly made. The Tribunal cannot entertain the application. The application is 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 McFatrige
Legal Member
9 August 2020