



**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

12A Falconer Place, Inverurie, AB51 4RN ("the property")

Case Reference: FTS/HPC/EV/22/0898

Parties

Dr Sandra Mhairi Gordon ("the applicant")

Ms Sigita Rudaitiene ("the respondent")

Aberdein Considine & Company ("applicant's representative")

1. The application dated 29 March 2022 was lodged with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) by email from

the applicant's representatives on 29 March 2022. Included with the application were an undated but signed statement by the applicant, a paper apart setting out that the Notice to Leave was given to the respondent on or around 22 February 2021, the S 11 notice and email dated 28 March 2022 sending same to the relevant local authority, a copy of the Private Residential Tenancy Agreement between the parties over the property commencing on 17 September 2019, the Notice to Leave dated 22 February 2021 and the email sending this to the tenant on 23 February 2021 at 11:36 to 'tatji@mail.ru', which is the email address stated for the tenant on the tenancy agreement. The paper apart states "In line with the statutory notice period, the Respondent was given 6 months to vacate the Let Property. The notice period under the Notice to Leave expired on 26 August 2021."

DECISION

2. 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."

3. 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 provisions:

S 55 of the Act Restriction on applying 6 months after the notice period expires

(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 more than six months after the day on which the relevant period in relation to that notice expired.

(2)In subsection (1), "the relevant period" has the meaning given in section 54(2).

(3)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).

Reasons:

4. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S55 an application may not be made using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice has expired.
5. In this case the signed and dated application together with the necessary supporting documents were not lodged with the FTT until 29 March 2022.
6. The Notice to Leave relied on ground 1 of schedule 3 of the 2016 Act and was served on 22 February 2021. In terms of S 54 (2) (c) (iii) of the 2016 Act as amended by the

Coronavirus (Scotland) Act 2020 the notice period for a Notice to Leave based on ground 1 of schedule 3 of the 2016 Act was 6 months. In terms of S 62 (5) the date of expiry of the notice to be entered in the Notice to Leave is to be calculated on the assumption that the tenant received the Notice to Leave 48 hours after it was sent.

7. The application is made on the basis that the Notice to Leave was sent on 23 February 2021 by email and thus is deemed to have been received on 25 February 2021. In terms of S 64 of the 2016 Act the end date would thus fall on 25 August 2021. The Notice to Leave actually gives an additional day as the date when proceedings can first be raised and states 27 August 2021 as that date. Thus any action could not be raised before that date.
8. The application must be rejected because it was made out with the period stated in S 55 of the Act. The Notice period expired on 25 August 2021. Even if one applied the later date stated in the Notice to Leave of 27 August 2021, the lodging date of 29 March 2022 falls well out with the period of 6 months after the day on which the relevant period in relation to that notice expired.
9. In terms of S 55 (1) of the Act it would not be appropriate for the Tribunal to accept an application based on a notice to leave for which the notice period had expired more than 6 months prior to lodging the application. 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
13 April 2022