

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF LESLEY JOHNSTON LEGAL MEMBER OF THE
FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rules 8 of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 ("the Procedural Rules")

in connection with

3/1 81 Causeyside Street, Paisley, PA1 1YT

Case Reference: FTS/HPC/EV/19/2228

DR JASMEET SINGH ("the Applicant")

LISA BANAGHAN ("the Respondent")

BACKGROUND

1. On 27 June 2019 the Applicant's Representatives lodged an application for eviction of the Respondent from the property at 3/1, 81 Causeyside Street, Paisley, PA1 1YT. ('the property'). The application was made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The ground of eviction set out in the application are stated as "tenancy breached as excessive arrears on account. Arrangements made to pay these have not worked."
2. The applicant lodged a copy of the tenancy agreement between the Applicant,

Respondent and Daniel Derver dated 22 November 2018; a copy of the Notice to Leave dated 7 February 2019 and addressed to “Daniel Derver & Miss Lisa Banaghan” and advising that an application will not be submitted to the Tribunal for an eviction order before 11 March 2019; and a copy of the section 11 Notice to the Local Authority.

3. By letter dated 8 August 2019 the Tribunal administration requested further information from the Applicant’s representatives, including: the following information from the Applicant’s representatives:

(i) Whether the application is made in respect of both Lisa Banaghan and Daniel Derver. Mr Derver is named as a tenant on the lease but is not named on the application;

(ii) The applicant’s title to bring the application. The address in the Land Register refers to “Flat T/L, 81 Causeyside Street, Paisley, PA1 1YU”;

(iii) On which ground the application is made in terms of schedule of the Private Housing (Tenancies) (Scotland) Act 2016?

(iv) Whether the Notice to Leave was served on the tenants separately;

(v) How the Notice(s) to Leave were served and evidence to confirm effective service;

(vi) How the section 11 notice was issued to the Council and evidence to confirm it has been issued.

4. The letter requested a response by 22 August 2019 and advised that “if we do not hear from you within this time, the President may decide to reject the application.”

5. No response was received from the Applicant.

DECISION

6. Rule 8 provides:

“8.— Rejection of application

(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.”

7. After careful consideration of the application and accompanying documents, I consider that the application falls to be rejected in terms of rule 8(c) on the basis that the Applicant has failed to confirm (i) how the Notice to Leave dated 7 February 2019 was served and (ii) evidence to confirm effective service. The Tribunal does not know when the Notice to Leave was served on the Respondent and cannot therefore assess whether the Notice to Leave has been validly served giving the requisite notice under the Act.

8. In terms of section 54(1) of the 2016 Act:

“(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.”

9. In terms of section 62(5) of the 2016 Act, the date to be specified in Part 4 of the Notice to Leave (the date on which the landlord under the tenancy expects to become entitled to make an application for an eviction order to the Tribunal) it is assumed that the tenant will receive the notice to leave 48 hours after it was sent.
10. The Applicant has not provided any evidence in relation to the date on which the Notice to Leave was sent to the Respondent. It is not therefore possible for the Tribunal to consider whether or not the Notice is valid in terms of the 2016 Act and therefore to consider the merits of the application in terms of rule 8(1)(a). The Tribunal has afforded the Applicant an opportunity to provide that information, and the other information requested by the Tribunal to assist with the application, but no response has been received from the Applicant. In the circumstances, the Tribunal considers that it would not be appropriate to accept the application.

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.

L. Johnston

Lesley Johnston
Legal Member
4 September 2019