



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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 Rules”)

Chamber Ref: FTS/HPC/EV/19/2587

Re: Property at Flat E, 31 Lansdowne Square, Dundee, DD2 3HU (“the Property”)

Parties:

Rhonda Hards (“the Applicant”)

Sean Hards (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 15 August 2019 the Applicant drafted an application under Rule 109 of the Rules, being an “application for eviction order” in relation to a private residential tenancy, submitting it the next day.
2. On 2 September 2019, after an initial review by a different Legal Member, the Tribunal wrote to the Applicant requesting a copy of the tenancy agreement; the Applicant’s Landlord Registration Number; information on how the Notice to Leave and notice to the local authority had been served; and evidence of the eviction grounds (intention to sell and intention to refurbish under grounds 1 and 4 respectively of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*).
3. The Applicant had provided no response to this request for information, despite further chasing letters from the Tribunal on 9 October and 5 November 2019.
4. On 29 November 2019, I reviewed the application as the Legal Member assigned as In-House Convenor and was satisfied myself that the information requests were pertinent and, at least in respect of the absence of evidence of that the grounds for eviction were met, left the application incomplete with the Applicant afforded sufficient time thus to provide the required information. I have reconsidered the application today as Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

5. I considered the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

5.—(1) *An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.*

(2) *The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*

(3) *If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. ...*

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—*

...

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. Rule 109 requires:

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; 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; and*

(iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable); and

(c) be signed and dated by the landlord or a representative of the landlord.

7. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:
- (1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*
- (2) Dealing with the proceedings justly includes—*
- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*
- (b) seeking informality and flexibility in proceedings; ...*
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.*
8. After consideration of the application and supporting papers, the application is incomplete under Rule 109(b)(i) as there is no evidence of the grounds for eviction, in particular under ground 1 (intention to sell). The terms of schedule 3 to the 2016 Act are not exhaustive as to the type of evidence required but nothing is provided here except an assertion that the Applicant seeks to sell. There is no reference to seeking marketing advice, obtaining a survey, consulting with a solicitor, or any of the other steps evidencing intention that the Act requires. In regard to refurbishment, there is scant reference to a need to “redecorate and refurbish” the Property before selling, but nothing as to the details of this work or a suggestion that it would be “impractical for the tenant to continue to occupy the property given the nature of the refurbishment” (wording from ground 3) which is core to the ground for eviction.
9. The Applicant has been afforded sufficient time to provide the necessary information to complete the application. The Applicant has failed to do so and in consideration of the over-riding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters. The further information requested would certainly be required by any full consideration of the application, so it was appropriate that those matters were requested at the time. The lack of evidence of a lease or evidence of service of the Notice to Leave leave me with concerns that there are broader issues with the application even if it were complete on the narrow terms of rule 109.
10. I noted that the Applicant referred to the Respondent not paying rent. It is unclear why she has not advanced eviction against him on that ground, which would likely be easier for her to vouch. Indeed, reading the supporting papers in application, it does read as if she seeks to sell only if the Respondent leaves, rather than seeks the Respondent to leave so that she may sell. It may be that

the Applicant will struggle to achieve eviction on grounds 1 or 3 even if better vouched in a fresh application but I reserve my judgment on that.

RIGHT OF APPEAL

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:-

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.

Joel Conn

Legal Member/Chair

29 November 2019

Date