

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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 Rules")

in connection with

54 Denholm Crescent, East Kilbride, G75 0BU ("the Property")

Case Reference: FTS/HPC/EV/19/3720

MR JOHN PAUL CATHCART ("the Applicant")

MRS FIONA DALL ("the Respondent")

1. The application was made under Rule 109 of the Rules being an application for a Private Residential Tenancy Eviction Order. The application was accompanied by copies of the tenancy agreement, a notice to leave and, following requests for further information, evidence that this was sent to the Respondent on 7 August 2019 and a copy of a notice under Section 11 of the Homelessness etc (Scotland) Act 2003. The application specified that the Applicant was seeking an order on Grounds 10, 12 and 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") as a result of the tenant apparently no longer occupying the property, non-payment of rent for four months and antisocial behavior.
2. The notice to leave specified the above grounds. In Part 4, it stated that an application would not be submitted to the Tribunal before 6 September 2019. Another request for further information dated 17 December 2019 was sent to the Applicant requiring him to provide, amongst other things, confirmation of the basis upon which the Tribunal could proceed to consider the application given an apparent error in the period of notice given to the Respondent.
3. The Applicant responded confirming he had given calculated a period of notice of 30 days was required from the date the notice was sent until the date on which it expired. He advised he did not believe an extra would make a difference given that the Respondent had not responded following service of the notice to leave nor had she returned to the Property.

Decision

4. The circumstances in which an application is to be rejected are governed by 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;*
- (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."

5. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

6. In this application, the Applicant is relying on the notice to leave sent on 7 August 2019. As an eviction order is sought on the basis of Grounds 10, 12 and 14 of Schedule 3 of the 2016 Act, the relevant notice period in terms of Section 54 of the 2016 Act is 28 days.
7. The Applicant confirmed that the notice was emailed to the Respondent on the 7 August 2019. Section 62 of the 2016 Act states:-

62 Meaning of notice to leave and stated eviction ground

(1)References in this Part to a notice to leave are to a notice which—

.....
(b)specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

.....
(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

In the present case, the Respondent would have been assumed to have received the notice on 9 August 2019. Section 54(2) of the 2016 Act states:-

(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,

The first day of the relevant notice period would therefore also be 9 August 2019. The notice period would therefore expire on 6 September 2019. Part 4 of the notice to leave specified that an application would not be submitted to the Tribunal before 6 September 2019. The notice required to specify the day falling after the day on which the notice period expires, being 7 September 2019. Accordingly, the notice to leave does not conform with the requirements of Section 62 of the 2016 Act and is invalid. Therefore, the Respondent can not be said to have been given notice to leave and, in terms of Section 52 of the 2016 Act, the Tribunal is not to entertain an application which is not accompanied by a notice to leave given to a tenant.

8. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success. Accordingly, the present application is rejected on the basis that it is frivolous.

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.

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Mr Alastair Houston

Legal Member

7 January 2020