



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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

14 Dunbar Court, Glenrothes, KY6 1JW ("the Property")

Case Reference: FTS/HPC/EV/20/0668

Agnieszka Zukowski, 16 Muirburn Place, ML11 0LX ("the Applicant")

Patryk Stefaniak, 14 Dunbar Court, Glenrothes, KY6 1JW ("the Respondent")

1. By application received on 26 February 2020 the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged a copy tenancy agreement and Notice to Leave, in support of the application. The application form states that the eviction order is sought due to unpaid rent, breach of tenancy and the landlord intending to refurbish the property. The Notice to leave only refers to breach of tenancy and the landlord intending to refurbish
2. On 11 March 2020 the Tribunal issued a request for further information to the Applicant. The Applicant was asked to clarify his entitlement to make the application, as he did not own the property. He was also advised that the Notice to leave appeared to be in the wrong format, did not provide the required information regarding the grounds for eviction and did not refer to ground 12, the ground which relates to rent arrears. The Applicant provided a response but did not address the issues which had been raised. On 6 July 2020 a further request

for additional information was issued to the Applicant. The Applicant was asked to provide evidence of service of the Notice to Leave. He was also advised that the Notice did not appear to be in the correct format and asked to clarify the position regarding the validity of the Notice. The Applicant was also asked to provide evidence of the eviction grounds stated in the Notice, being grounds 3 and 11 and again asked if he wished to amend the application to reflect the fact that the property was owned by a third party. In his response the Applicant confirmed that the application should be amended to the correct name. He also provided a post office receipt for the Notice to leave. He provided further information regarding rent arrears but did not answer the other issues raised by the Tribunal. He was provided with a further opportunity to do so, but failed to address the issues which had been raised regarding the Notice to leave and the grounds for eviction.

DECISION

3. The Legal Member considered the application in terms of 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.”

4. **After consideration of the application and the documents submitted by the Applicant in support of same, 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 Rules.**

Reasons for Decision

5. '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.
6. The Applicant has not issued a Notice to Leave to the Respondent in the prescribed format. Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (the 2017 Regulation) sets out the prescribed form for a notice to leave. It states, "6. A notice to leave given by the landlord to the tenant under Section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act **must be in the form set out in Schedule 5.**" Part 2 of the form includes a list of eviction grounds from which the landlord can select which ground or grounds he wishes to rely on. This list is absent from the Notice issued by the Applicant and instead he has only listed grounds 3 and 11. Part 3 of the Notice requires the landlord to provide information as to how the grounds have arisen and provide evidence of same. The Applicant states "Rent not paid on time (breached term of agreement) outstanding rent". There is no reference to ground 3. Text has been removed from both Part 3 and Part 4 of the form, including the section relating to the provision of evidence, and no evidence is referred to or produced. The Notice which has been produced is therefore not in the form laid out in the Schedule.

7. The relevant sections of the 2016 Act are as follows:-

52 Applications for eviction orders and consideration of them

...

(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.

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—

(a) is in writing,

(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,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

8. The Legal Member notes that although the Notice given to the Respondent is in writing, specifies grounds for eviction and the date upon which the Applicant expects to become entitled to make an application to the Tribunal it is not in the format prescribed by the regulations (Section 62(d)). The Applicant has therefore failed to comply with the requirements of Section 52(3) and 62 of the 2016 Act. As a result, the Tribunal cannot entertain the application.

9. The Legal Member also notes that the application and Notice to leave make reference to unpaid rent. However, the application form does not specifically mention ground 12 of Schedule 3 (rent arrears over three consecutive months) and this ground is not included in the Notice to Leave. Instead, the Applicant

seeks to rely on ground 11, breach of tenancy. However, ground 11 of Schedule 3 states, “The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent”. The Applicant is therefore not able to rely on ground 11, if the only breach of tenancy alleged is non payment of rent. No information is provided to suggest any other breach of tenancy. The only other eviction ground relied upon is ground 3, landlord intends to refurbish the let property. No further information is provided and no evidence submitted. Rule 109 requires a landlord to provide the Tribunal with evidence in support of the eviction ground. Although the Applicant has been given the opportunity to address this issue, he has failed to do so.

10. The Legal member therefore determines that, as a valid Notice to Leave has not been served, and as the Applicant has not complied with the requirements of Rule 109 with regard to the provision of evidence in support of the application, the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.

Josephine Bonnar
Legal Member
24 August 2020