



Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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/22/3582

Re: 24B Links Street, Kirkcaldy, KY1 1QE ("the Property")

Parties:

Donald Nicolson ("the Applicant")

Florin Ioanovici, Veronica Ioanovici ("the Respondent")

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application for an eviction order was received by the Tribunal under Rule 109 on 28th September 2022, with accompanying documents.
2. The application was considered by a legal member of the Tribunal and by letter dated 3rd November 2022, the Applicant was informed that further information was required as follows:

Before a decision can be made, we need you to provide us with the following:

1. Please confirm the identity of the Respondents as the surname on the application differs from the surname on the Notice to Leave;
2. Please confirm whether or not there are joint tenants as the application is only against one tenant;

3. Please provide a rent statement detailing dates and amounts of rent due, dates and amounts of rent paid and a running total of arrears;

4. Please provide a copy and proof of service of the section 11 Notice on the local authority.

Please reply to this office with the necessary information by 17 November 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. By emails dated 16th November 2022, the Applicant provided information in relation to the Respondents, the rent arrears and a section 11 notice.
4. The application was considered by a legal member of the Tribunal and by letter dated 22rd December 2022, the following further information was required:

Before a decision can be made, we need you to provide us with the following:

1. Please clarify if you are relying on ground 11 as well as ground 12. Ground 11 cannot be used for non-payment of rent. Please explain the basis of the claim that there has been a breach of tenancy and provide evidence of this.

2. Please provide a rent statement which covers the whole period of the arrears. It should show the monthly rent due, all payments made and the running total of arrears owed at the end of each month.

3. If you have complied with the Rent Arrears Pre Action Requirements Regulations, please provide evidence of this. Compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant an order for eviction.

Please reply to this office with the necessary information by 5 January 2023. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

5. The application was considered by a legal member of the Tribunal and a further opportunity was afforded to the Applicant to provide the information by letter dated 31st January 2023. No response was received.
6. The application was considered by a legal member of the Tribunal and by letter dated 13th March 2023, the following further information was required within 7 days, failing which the application may be rejected:

1. Please reply to the previous requests for further information of 22.12.22 and 31.1.23. Unless a reply is received the Tribunal may reject the application on the basis that you are no longer pursuing the matter.

2. Please advise how you consider the tenants have been provided with the necessary 28 days notice given that the Notice to Leave was not received until 30.8.22, which is less than 28 days prior to 23.9.22?

3. Please note that the date the application is held to be made is the date the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgement and that in terms of rule 55 of the Private Housing (Tenancies) (Scotland) Act 2016 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. Thus please now comply with the requests for further information still outstanding as otherwise the notice may expire as a basis for an application.

No response was received.

7. The application was considered by a legal member of the Tribunal on 12th April 2023.

Reasons for Decision

8. The Tribunal 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;

(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."

9. It would not be appropriate to accept the application as the Royal Mail tracking information provided for delivery of the Notice to Leave indicates that the required period of notice of 28 days has not been given to the Respondents as required by the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act").

10. Furthermore, in terms of section 55 of the Act, a landlord may not make an application to the 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. The Tribunal does not have a completed application from the Applicant, and the six month period has now expired.

11. The application is accordingly rejected.

Right of Appeal

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.

H. Forbes

Legal Member/Chair

12th April 2023
Date