



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

26 Queen Street, Coupar Angus, PH13 9DE (the property)

Case Reference: FTS/HPC/EV/20/0847

Mary Ford ("the applicant")

William McPhee ("the respondent")

1. On 9 March 2020 the applicant's representative Ms McIntosh from Belvoire Lettings Perth lodged and undated application for an eviction order in terms of Rule 109 of the Procedural Rules with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) .
2. The application stated as the applicant's address c/o Belvoire Lettings, Perth PH1 5JJ.
3. The documents lodged with the application were: copy of an undated Notice to Leave without attachments, rent statement and emails regarding complaints about antisocial behavior.
4. On 11 March 2020 the Tribunal wrote to the applicant's representative requesting a copy or the notice to the local authority as per S 56 (1) of the Private Housing

(Tenancies) (Scotland) Act 2016 (the 2016 Act).

5. This was not received.
6. On 29 July 2020 the Tribunal again wrote to request further information stating :
“Currently the application does not fulfil the requirements for an application under Rule 109. In order for the Tribunal to process the application please provide the following, otherwise the application may have to be rejected:
 1. Replacement page with date of application
 2. S 11 Notice sent to the Local Authority together with proof of sending as required by S 56 of the Private Housing (Tenancies) (Scotland) Act 2016.
 3. The copy of the Notice to Leave attached to the application is not dated. Please provide the version showing the date and provide proof of service of the Notice to Leave. Please also detail which documents were sent together with the Notice to Leave.
 4. Copy of the tenancy agreement
 5. Ground 12 was not a ground mentioned in the Notice to Leave. In order for the Tribunal to consider whether this should be permitted as an added ground please make representations as to when and how the Respondents have been advised that this is an issue and why this was not included in the Notice to Leave but should be allowed to be added into your application at this stage.
 6. Your Notice to Leave referred to ground 11 Breach of tenancy agreement but this is not stated as a ground for the application. Please confirm that you are no longer wishing to rely on that ground or provide an amended page to include the ground.
 7. You state the address of the Applicant as a C/O address. Please provide the actual address of the Applicant.” The Tribunal requested this information to be lodged by 12 August 2020. This was not forthcoming.
7. A further request for the same information was sent by the Tribunal on 7 September 2020 with a deadline for the provision of the requested information and documentation on 21 September 2020.
8. No answer was received and no further documentation submitted.

DECISION

1. I considered the application in terms of Rule 8 of the 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."

2. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

Relevant Legislation

Application for civil proceedings in relation to a private residential tenancy

Application for an eviction order

109. 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

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

REASONS FOR DECISION

3. The application did not contain a proper address for the Applicant.
4. No Notice to the local authority as required by s 56 of the 2016 Act was supplied.
5. The Notice to Leave enclosed was not dated and no information was provided as to when and how this was served.
6. Further information had been requested by the Tribunal 3 occasions and no reply had been received providing the requested information and documentation. The request had been directed at the Applicant's representative as stated on the application.
7. The Applicant was clearly advised that the application was incomplete and that the application may be rejected unless the documentation and information requested is provided.
8. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. This was not provided.
9. It was not possible for the Tribunal to establish if a valid Notice to Leave had been lodged as required by Rule 109 (b) (ii) as the Notice to Leave produced was undated and there was no evidence supplied as to when this was served and the documents appended to the Notice to Leave were missing.
10. In terms of Rule 109 (a) the application has to state (i) the address of the landlord in terms of Rule 109 (c) it has to be dated. Neither was the case. Only a c/o address was provided and the application was undated.

11. Given that the application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules, it would not be appropriate for the Tribunal to accept the incomplete application.
12. The Tribunal had given the Applicant ample opportunity to provide documents and information which would cure these defects. No reply was received to the letters issued on 11 March 2020, 29 July 2020 and 7 September 2020.
13. The application it is therefore rejected.

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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McFatrige

Petra Hennig McFatrige
Legal Member
6 October 2020