



Decision with Statement of Reasons of Alan Strain, 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/23/0126

Re: 7 Edina Street, Edinburgh, EH7 5PN (Property)

Parties

Mr Tim Kennedy (Applicant)

Ms Amber Restorick (Respondent)

Ennova Law (Applicant's Representative)

Tribunal Member:

Alan Strain (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).

Background

1. The application was received by the Tribunal under Rule 109 on 12 January 2023.
2. The application was considered by the Tribunal and further information was requested by letters of 21 February 2023 and 11 April 2023 as follows:

"Before a decision can be made, we need you to provide us with the following: • Please note the Cost of living Scotland Act applies to this application, please see attached information regarding this and please advise if you have any further instructions. •

There appears to be two tenants in this lease and with PRTs, any notice to leave ending the tenancy must be served on all the tenants. Please advise if you have served a notice to leave on both tenants and if so please let us have the second notice to leave with evidence of service and please amend your application form to include the second tenant giving their full name and address. If you have not served a notice to leave on the 2nd tenant please advise why you believe this is a competent application?

- If you wish to proceed after considering point 2 above we will also require evidence of how the notices to leave were served on the tenants and as you mention one was hand delivered please advise why this would be competent when the lease referred to e-mail delivery only?
- Please also provide evidence to support the ground of eviction namely a letter of engagement with an estate agent or solicitor regarding the sale or copy home report? Please reply to this office with the necessary information by 7 March 2023. If we do not hear from you within this time, the President may decide to reject the application.”

And

“Before a decision can be made, we need you to provide us with the following: • We refer to our letter of 21 February 2023 requesting further information, to which we have received no response. A further copy is attached for your attention. Please reply to this office with the necessary information by 25 April 2023. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received to any of the requests for information.

Reasons for Decision

3. 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."

4. Rule 109 of the Tribunal Procedure Rules provides:

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 (if known); 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.

The Applicant has failed to provide necessary information, specifically evidence of a valid notice to leave with proof of service on all of the tenants and evidence in support of the Ground for eviction. The Tribunal could not grant the order sought without this information.

5. The Tribunal accordingly consider that there is good reason why the application should not be accepted. 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.

A Strain

23 May 2023

Legal Member/Chair

Date