



**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/22/3256**

**Re: Dubsidge Cottage, Heck, Lockerbie, DG11 1JD ("the Property")**

**Parties:**

**Louise Proctor and Philip Proctor ("the Applicant")**

**Emma Graham ("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 7<sup>th</sup> September 2022, with accompanying documents.
2. The application was considered by a legal member of the Tribunal and by letter dated 5<sup>th</sup> October 2022, the Applicant was informed that further information was required as follows:
  1. The Notice to Leave appears to provide for a notice period one day short of the 84 days provided for in the legislation. The Notice is presumed to be received two days after sending, and the date inserted at Part 4, namely the date after which an application will be made, should be the day after the expiry of the notice period. You may wish to consider withdrawing the application and re-serving the Notice to Leave with the correct notice period. You may wish to take advice in this regard.

Depending on your response to the above point, the following issues should also be addressed:

2. You do not appear to be the landlord in terms of the tenancy agreement. It may be the case that you are a joint owner, as your name is included as joint owner on the landlord register. Please confirm whether this is the case. If you are the joint owner, please confirm whether the landlord wishes to be a joint applicant. If she does not wish to be a joint applicant, please provide her written authorisation to you making this application in your sole name. If you are not a joint owner, please confirm how you have title and interest to make the application.

3. The tenancy agreement shows two tenants. An application must be raised against both tenants, even where one has left the property, unless he was formally removed from the tenancy agreement, and a new agreement put in place. Please provide an explanation and a copy of any Notice to Leave served upon the second tenant. Please confirm if you wish to amend the application to add him as a Respondent, if, indeed, a Notice to Leave was served upon him.

4. Please provide evidence of service of the Notice to Leave upon the Respondent(s).

5. Please provide evidence of service of the section 11 notice upon the local authority.

6. The evidence you have provided of intention to sell does not refer to the address of the property, and is insufficient. Please provide additional evidence in this regard. The legislation mentions a home report or engagement letter as examples of suitable evidence.

Please reply to this office with the necessary information by 19 October 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 12<sup>th</sup> October 2022, the Applicants responded, providing some further information and documentation.

4. The application was considered by a legal member of the Tribunal and by letter dated 10<sup>th</sup> November 2022, the following further information was required:

You have responded by giving us further information and you have amended your application. The in-house convenor has reviewed your application again. As we pointed out in our letter of 5 October 2022, we require proof of service of the notice to leave and we also require to be satisfied that the correct notice period has been given.

You have sent us a copy of an email sent to egraham291. This is not the email address for the respondent given in the tenancy agreement. Please clarify why a different email address was used.

Regarding the notice period, you have only given 86 days when 87 should be given in terms of section 62 of the Private Housing (Tenancies) (Scotland) Act 2022. Please provide any evidence you have that the notice to leave was received on 22 April 2022. Please respond to this request within 14 days. You may also wish to consider seeking independent legal advice in connection with this matter.

Please reply to this office with the necessary information by 24 November 2022. If we do not hear from you within this time, the President may decide to reject the application.

5. By email dated 10<sup>th</sup> November 2022, the Applicant responded to clarify that the Respondent had provided a different email address to be used for service of notices, and questioning the interpretation regarding the period of notice. The Applicant stated that the email to which the Notice was attached was delivered on 22<sup>nd</sup> April 2022.
6. The application was considered by a legal member of the Tribunal and by letter dated 8<sup>th</sup> December 2022, the following further information was required:

You have referred to the relevant sections of the 2016 Act. However, in terms of Sections 62(1)(b) and (4) the date which must be specified in Part 4 of the Notice to leave is the “day falling after the notice period defined in section 54(2) will expire”. It therefore appears that the Notice is invalid. Please advise if you wish to withdraw the application or explain why you consider that the application should proceed.

Please reply to this office with the necessary information by 22 December 2022. If we do not hear from you within this time, the President may decide to reject the application.

7. By email dated 26<sup>th</sup> January 2023, the Applicant requested further information in respect of the notice period calculation, and provided further information in respect of the Respondent’s email address.
8. The application was considered by a legal member of the Tribunal and by letter dated 22<sup>nd</sup> February 2023, the following further information was required:

The tribunal again indicates to you that it cannot provide legal advice to any parties to an application. The tribunal is an independent judicial body.

In our previous correspondence to you, we invited you to seek independent legal advice on this matter from a solicitor or advice agency of your choosing. We are willing to allow you one further

opportunity to seek that advice from an independent agency and to respond to the matters raised in the letters from the tribunal.

Again in your most recent email, you ask another question upon which you seek advice relating to the current rules on evictions in Scotland. Again the tribunal cannot provide you with advice on that question. You need to seek independent legal advice on that matter.

As indicated the tribunal is willing to allow you one for the opportunity to consider the previous letters and to respond to them as previously requested.

Please reply to this letter no later than 10 March 2023.

If you fail to respond to this letter in appropriate and full terms and to provide the required information which has now been requested on a number of separate occasions then the tribunal is likely to have no option but to reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the Firsttier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

No response was received.

9. The application was considered by a legal member of the Tribunal on 13<sup>th</sup> April 2023.

### **Reasons for Decision**

10. 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."*

11. It would not be appropriate to accept the application as the Notice to Leave is invalid as a result of the error in the date included at Part 4 of the Notice. The earliest date on which Tribunal proceedings could begin, in terms of section 62(1)(d) and 62(4) of The Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”), was 18<sup>th</sup> July 2022, one day after the expiry of the notice period. The Notice is not compliant with the legislation and it is not a Notice to Leave within the meaning of the Act. The application is not, therefore, accompanied by a valid Notice to Leave as required by section 52(3) of the Act, and the Tribunal cannot entertain the application.

12. 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.**

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**Legal Member/Chair**

**13<sup>th</sup> April 2023**  
**Date**