



**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

352 Kingsacre Road, Glasgow, G73 2EP

Case Reference: FTS/HPC/EV/20/1083

Mr John Travers, Mr Stephen Travers ("the applicants")

John Scott, Mrs Frances Scott ("the respondents")

1. The application dated 15 April 2020 was lodged by the applicants' representatives Dial a Home with the First-tier Tribunal for Scotland Housing and Property Chamber (the Tribunal).
2. The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The following documents were lodged in connection with the application:- Tenancy Agreement for the tenancy commencing on 18 December 2019 for the property , Notice to Leave dated 9 March 2020 to the respondents and invoice from Sheriff Officers Stirling Park dated 12 March 2020, S 11 Notice, rent statement for the period of 18 December 2019 to 18 March 2020 . The documents referred to above are referred to for

their terms and held to be incorporated herein.

3. The Tenancy agreement lodged shows the landlord in terms of the Private Residential Tenancy agreement are the applicants in this case. The respondents are the tenants of the property.
4. Clause 8 states that the first rental payment is due on 18 December 2019 for the period to 17 January 2020 and payments are thereafter due on the 13th day of each month for the month in advance. The rent is £495 per calendar month.
5. The Notice to Leave is dated 9 March 2020 and in terms of Part 4 of the Notice to Leave the first day on which proceedings can be raised with the First tier Tribunal Housing and Property Chamber is stated in the Notice to Leave as 8 April 2020.
6. The ground/s of eviction referred to in the Notice to Leave and the application is/are: You are in rent arrears over three consecutive months.
7. In part 3 of the application it is stated: "tenant has not paid rent since moving into the property on 18th December 2019. Despite numerous attempts & discussions with the tenants they have still not made any payments." and "We have attached a rent arrears summary which shows no rent received"
8. The rent arrears summary was not submitted in evidence.
9. On 4 June 2020 the Tribunal asked the applicants to advise of the way the Notice to Leave was served and asked for evidence of service. The Tribunal also asked for evidence of the service of the S 11 Notice on the Local Authority. On 5 June 2020 the applicants' representative sent a copy of a Sheriff Officers Stirling Park invoice dated 12 March 2020 for service of the Notice to Leave on the respondents. The Sheriff Officers' report as to when and how service had been carried out was not produced.

10. On 22 June 2020 and 5 August 2020 respectively the Tribunal again wrote to the applicants representatives requesting the following information to be provided with a deadline of 19 August 2020 and the information that if this was not received the President was likely to reject the application :

- John Scott has been added to the application as a Respondent. You have indicated that Frances Scott may be deceased. If this is the case she should be removed from the application. However, you should obtain evidence of this (such as a copy of the death certificate) and submit this to the Tribunal before making a request to do so.
- You have provided a Sheriff Officer invoice as evidence of service of the Notice to leave. This does not provide the date of service. Please provide evidence of this such as a report or certificate of service from the Sheriff Officer.
- The rent statement which has been lodged indicates that the rent account went into arrears on 18 December 2019. The Notice to leave is dated 9 March 2020. If the Notice was served on or about the 9th March 2020 there would not have been rent arrears over three or more consecutive months at the date of service. Please clarify the position regarding the validity of the Notice.
- As previously advised, please provide details of how and when the section 11 notice was given to the local authority, and provide evidence of same.

11. No reply was received to either letter.

12. The documents lodged and the case correspondence are referred to for their terms and held to be incorporated herein.

DECISION

13. 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."

14. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

Relevant legislation:

Rule 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 [\[F72\]](#) (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
- iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

S 52 of the Act states: Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(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.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

15. I consider that the lodging requirements in terms of Rule 109 b are not met for the following reasons:

16. I consider that the requirement in s 52 (3) of the Act and Rule 109 (b) (ii) of the Procedure Rules is not met in this case. The Tribunal can only entertain an application if it is accompanied by a Notice to Leave. I consider that this requirement means that a valid Notice to Leave has to be submitted with the application.

17. In this case the Notice to Leave to both respondents was dated 9 March 2020. Although it is still not clear when and how the Notice to Leave was actually served, it is clear that this had to be after 9 March 2020, which is the date on the Notice to Leave and on or before 12 March 2020 which is the date of the invoice from Stirling Park invoicing for the service carried out.

18. The Ground under which the Notice to Leave was served was not met at the time the Notice to Leave was served. Ground 12 (1) of Schedule 3 of the Act requires the following: "12 Rent Arrears (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

19. Sheriff I Fleming in the Upper Tribunal decision [2019] UT 59 Abdul Majid v Adele Gaffney and Andrew Robert Britton of 17 October 2019 stated in para 9" ... *It is clear from the terms of the Notice to Leave that ground 12 is being relied upon; as at the date of the Notice to Leave the tenant must have been in rent arrears for three or more consecutive months. Therefore, if the tenant was first in arrears of rent as at 30 April 2019 then the*

expiry of the three months period would be 30 July 2019. As at 1 July 2019 the tenant was not in rent arrears for three or more consecutive months. The tenant must have been in arrears for the specified period of time, not simply owing rent. Ground 12 does not apply as at the date of service of the Notice to Leave. “ and in para 14: “... It is clear that the words “expects” relates to the date on which the application will be made. That is entirely distinct from the eviction ground. The statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not it is invalid. If it is invalid decree for eviction should not be granted. The decision of the First-tier Tribunal sets out the position with clarity. It could in my view it could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to the making of an application. Such an approach would be open to significant abuse. Either the ground exists at the time when the Notice to Leave is served or it does not. If it does not the Notice to Leave is invalid and it cannot be founded on as a basis for overcoming the security of tenure.....” This clearly sets out that the requirement of a valid Notice to Leave is that at the time the Notice to Leave is served the ground on which the notice is based must exist.

20. In terms of the Notice to Leave however ground 12 clearly requires three months consecutive rent arrears. The rent statement shows that the arrears started to accumulate on 18 December 2019. Rent payments were thereafter due on 13 January 2020 and 13 February 2020. However, by the date of 12 March 2020, which is the latest day the Notice to Leave could have been served in terms of the invoice from Stirling Park, the respondents could not have been in arrears of 3 consecutive months as the tenancy only commenced on 18 December 2019 and the total term of the tenancy between 18 December 2019 and 12 March 2020 was less than 3 full months. Applying the reasoning of the Upper Tribunal as set out above it is clear that at the time the Notice to Leave was served the conditions for ground 12 did not yet exist. The Notice to Leave is thus not valid.

21. The applicants’ representative was written to by the Tribunal on two occasions giving ample time for them to produce information about when precisely the Notice to Leave was served and to address specifically the issue of the validity of the Notice to Leave in terms of the dates as set out above. They have not replied. The concerns of the Tribunal had been clearly set out in the letters to the applicants’ representative. In the absence

of any explanation by them as to how the Notice to Leave could be considered valid the Tribunal concludes that the requirements of Ground 12 were not met at the time the Notice to Leave was served.

22. It would not be appropriate for the Tribunal to entertain an application that is not based on a valid Notice to Leave in terms of S 52 (3) of the Act and Rule 109 of the Procedural Rules.
23. For the reasons stated above the application was not validly made. The Tribunal cannot entertain the application. The application is 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.

Petra Hennig-McFatrige

Petra Hennig McFatrige
Legal Member
2 September 2020