



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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 Rules”)

Chamber Ref: FTS/HPC/EV/19/3626

Re: Property at 632 Main Street, Mossend, ML4 1DX (“the Property”)

Parties:

Pauline Scanlan (“the Applicant”)
Andrew Millar (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 6 November 2019 the Applicant drafted an application under Rule 65 of the Rules, being an “application for order for possession in relation to assured tenancies”, submitting it shortly after.
2. The application sought eviction on the basis of rent arrears but apart from stating rent due since July 2019, the grounds of the Housing (Scotland) Act 1988 were not specified. The application had a covering letter, detailing “the background to this situation” and a little further history on the rent arrears; the final page of a lease (the signing page); and an undated demand letter seeking payment of rent due in July, August and September 2019.
3. On 12 November 2019, the Tribunal wrote to the Applicant seeking a copy of:
 - a. A copy of the notice served on the tenant with intention to raise proceeding for possession of a house let on an assured tenancy (AT6);
 - b. A copy of the notice to quit (if applicable);
 - c. A copy of the notice given to the local authority under section 11(3) of the Homelessness etc (Scotland) Act 2003; and
 - d. Evidence of service of that notice on the local authority.

The Applicant was given until 19 November 2019 to provide these papers.

4. The Tribunal’s clerks received a telephone call from the Applicant where she said she did not have some of the documents. No further documents at all were received from her however.

5. The application was considered by me as the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

6. I considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. ...

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—

...

- 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.

7. Rule 65 (as amended) further provides:

Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 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 possession grounds which apply as set out in Schedule 5 of the 1988 Act;*

(b) *be accompanied by—*

- (i) *a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;*
- (ii) *a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;*
- (iii) *a copy of the notice to quit served by the landlord on the tenant (if applicable); and*
- (iv) *evidence as the applicant has that the possession ground or grounds has been met;*
- (v) *a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable); and*
- (vi) *a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1980 (if applicable); and*

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

8. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

(1) *The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*

(2) *Dealing with the proceedings justly includes—*

(a) *dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*

(b) *seeking informality and flexibility in proceedings; ...*

(e) *avoiding delay, so far as compatible with the proper consideration of the issues.*

9. After consideration of the application and attachments, I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application, it cannot be accepted.

10. Though the Applicant has not been afforded as much time to provide the documents as in some applications I have encountered, she has been afforded sufficient time to provide simple documents which are required under Rule 65(b)(ii), (iii) and (v). She has provided nothing and has confirmed she does not hold all the papers requested. It is easy to hypothesise that she has not issued an AT6 at all.

11. Further, the Tribunal clerk who issued the letter of 12 November 2019 can be forgiven for not appreciating the insufficiency of the lease documentation lodged and the terms of the application. A full copy of the lease "or, if this is not available, as much information about the tenancy as the landlord can give" (per Rule 65(b)(i)) is also required. The application failed to state the grounds for possession (Rule 65(a)(iv)) (though to be fair to the Applicant, her statement of arrears remaining would likely be *prima facie* sufficient evidence under Rule 65(b)(iv) that any rent arrears grounds were met). Given the general insufficiency of the papers, there seems no point holding up full consideration of the application simply to refuse it on further additional grounds. In consideration of the over-riding objective, especially that of avoiding delay, it is appropriate that the decision to refuse the application is made at this time so as to conclude matters.
12. I did note that what was provided of the lease bore a single date under the Applicant's signature: "18 Dec 2018". If this is correct, the lease could not be an Assured Tenancy but would be a Private Residential Tenancy. Apart from the technical issue of the application then requiring to be transferred to Rule 109 and assessed under those rules, it would require a Notice to Leave served on the Respondent under appropriate notice. There is no suggestion in the papers of any such document was issued and again I saw no gain to the Applicant or the Tribunal's administration in holding off refusal of this application to enquire further as to whether this is actually a PRT.

RIGHT OF APPEAL

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:-

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.

Joel Conn

Legal Member/Chair

Date

21 November 2019