



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBER PRESIDENT**

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/EV/23/3068

Parties

Mr Mohammed Riaz (Applicant)

Ms Jade Scott (Respondent)

24 Grove Street, Denny, Stirlingshire, FK6 6PG (House)

1. On 2023, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for eviction of the Tenant by the Landlord. The Applicant was seeking eviction in terms of Ground 12 that the tenant had been in arrears of rent for over 3 months.
2. The Applicant lodged a copy of a Notice to Leave addressed to the Respondent citing Ground 12 and dated 31st May 2023 and specifying a date of 28th June 2023 as the date after which the landlord will be entitled to make an application for eviction. The Applicant also lodged a copy of the Tenancy Agreement; S11 notice and proof of delivery on the local authority as well as a sheriff officer's certificate of execution confirming delivery of the Notice to leave on 31st May 2023; rent

statement and copy letters to the tenant.

3. The Tribunal requested further information from the applicant by e-mail dated 28th September 2023. The Tribunal asked for the following information in respect of this application:-
4. “A legal member of the Tribunal with delegated powers of the Chamber President has considered the application and has determined that the following information requires to be provided before the application can progress: 1. Please provide a full copy of the Notice to Leave so that we can check the validity of it.”
5. The Applicant responded on 4th October 2023 and enclosed a copy of the Notice to Leave which is dated 31st May 2023 and states a date of 28th June 2023 before which the Applicant cannot raise proceedings for eviction.
6. The Tribunal wrote again to the Applicant on 23rd October 2023 asking the following *‘We refer to our email of 28 September 2023 and note your response by email on 29 September 2023. A legal member of the Tribunal with delegated powers of the Chamber President has further considered the application and has commented as follows: •*
*In terms of section 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016, it is assumed that the tenant will receive the notice 48 hours after it is sent. However, on the basis that the notice was served by sheriff officer on 31 May 2023, the assumption does not apply. However, you will note that part 4 of the notice to leave states “An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that Tribunal proceedings can start and **will be at least the day after the end date of the relevant notice period...**” It appears that the end of the notice period was 28 days after 31 May, i.e. 28 June 2023 and that the date which should have been entered at part 4 is the following day, i.e. 30 June 2023. It therefore appears that the NTL is invalid. Please advise whether you wish to withdraw the application or alternatively clarify the basis upon which you think the application can be accepted. Please reply to this office with the necessary information by 6 November 2023. If we do not hear from you within this time, the President may decide to reject the application.”*
7. The Applicant responded on 31st October 2023 asking “Dear Mr Doherty, I

thank you for your email of 23rd October. I note the comments made in respect of the Notice to Leave and that the date should have read 30th June. I would be grateful if you could reconsider the position in relation to the date because although the date falls on the 28th day, you will see that the action was not lodged with the Tribunal until 4th September 2013, which is nearly 3 months after the date of the expiry of the notice therefore giving the tenant ample time to seek advice but it actually give her more notice than 28 days. I would respectfully ask you to reconsider your position and accept the application. I look forward to hearing from you.”

8. DECISION

9. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

10.

"Rejection of application

Rule 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable

period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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."

11. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to

accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

12. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

13. The applicant has lodged a notice to leave which has been served by Sheriff Officers by letterbox service at the Property address. This is a valid method of service and shows that the Notice to leave was served on the Respondent on 31st May 2023 however in terms of the Private Housing (Tenancies) (Scotland) Act 2016 the Applicant has not given the extra day required in terms of S64 (4) of the Act. A notice which contains Ground 12 requires to give 28 days' notice plus 48 hours if it is served by recorded delivery or email and then a further day to meet the requirements of s64 (4) of the 2016 Act. As the Notice was served by Sheriff officer the Tribunal accepts it was delivered on 31st May 2023 and so the 48 hours presumption of delivery is not required, however the Notice to Leave was delivered on 31st May and 28 days' notice with an extra day as required in terms of the Act is 29th May (and not 30th May as erroneously stated in the Tribunal last letter." The Notice to leave cites the 28th May as the specified date and does not allow the extra day required by the Act as such it does not give the required notice and so for that reason it is invalid. The Applicant has asked the Tribunal to use discretion and accept the Notice despite this, given that he has waited several months before raising this action and the tenant has therefor had further time to leave. Unfortunately the Tribunal has no discretion in terms of the 2016 Act and

so cannot accept an invalid Notice to Leave. Given the notice to leave is not valid as it has not given the required notice this application has no prospect of success. In the circumstances I consider that this application is misconceived, has no hope of success and therefore it must be rejected.

14. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

15. It is open to the Applicant to reapply once he has served a new notice to leave with the appropriate notice period given. The Applicant may wish to seek advice on this before doing so as matters relating to evictions are complex.

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.



Legal Member
20th November 2023