



**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

Case reference FTS/HPC/EV/23/2755

Parties

Mr Paul Kellock (Applicant)

Mr Gordon Muir (Respondent)

3 Whyterose Terrace, Aberhill, Methil, Leven, KY8 3AP (House)

1. On 12.8.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules. The application did not refer to a specific ground listed in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). It did refer to grounds 1 b and 10 a, which appear to have been taken from schedule 5 of the Housing (Scotland) Act 1988.
2. In letters dated 16.8.23, 24.8.23, 18.9.23 and 19.10.23 from the FTT to the Applicant

requested further information and documentation the FTT had repeatedly advised the Applicant that a S 11 notice was required. It had also pointed out to the Applicant that the Notice to Leave submitted appeared to be invalid due to the notice period of 84 days not having been given. The FTT further asked the Applicant to address the issue of the format of the application as this was based on rule 109 but quoted grounds from the 1988 legislation. The FTT pointed out to the Applicant that in order to make a valid application he had to amend the application, had to submit the required evidence for this, had to supply a valid S 11 notice and a valid notice to leave to the tenant together with proof of service. The FTT had asked the Applicant to provide evidence of ground 4 applying, which was the ground stated in the Notice to Leave included in the bundle.

3. The Applicant provided a number of documents in further correspondence, however, no S 11 notice was provided. The Applicant also finally sent the most up to date tenancy agreement in the email of 2.11.23, which discloses another tenant.
4. The documents lodged by the applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

- 6. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

REASONS FOR DECISION

1. The documents required in terms of rule 109 (b) ii and iii were not provided, despite the FTT having requested these.
2. After extensive correspondence it appears that the Applicant had issued a tenancy agreement to the Respondent's mother and another individual, an Ian Muir, on 10.2.2020. This appears to have replaced and updated a previous tenancy in the sole name of the Respondent's mother commencing 12.9.2011 under the previous legislation of the Housing (Scotland) Act 1988. From the documents it appears that because of the second tenancy submitted, whatever arrangement may currently be in place would be a matter arising from a Private Residential Tenancy under the 2016 Act rather than the 1988 Act, as the previous tenancy for the property with a sole tenant had been replaced with a Private Residential Tenancy with joint tenants in 2020. One issue in this case is whether or not the Respondent is a tenant of the Applicant by succession and it is not possible from the documents submitted for the FTT to make any findings on this matter. What is clear is that whatever application to recover the property would, should the FTT have jurisdiction at all, arise out of the jurisdiction pertaining to the 2016 Act and indeed the Applicant has made an application under rule 109.
3. The Applicant has provided a Notice to Leave which states as the ground for the notice ground 4. This in terms of S 54 (2) and (3) of the Act requires a notice period of 84 days.

Based on the information provided by the Applicant, the Notice to Leave was given to the Respondent personally on 28.2.23 and states as the date in part 4 for when proceedings can first be raised 29.3.23. This gives a notice period of 28 days and not the 84 day period for ground 4 required in terms of s 52 of the 2016 Act. The Applicant was asked to address this matter and did not do so. The Notice to Leave provided appears to be invalid. The Applicant has not provided a Notice to Leave as required in terms of rule 109 (b) (ii).

4. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. Rule 109 (b) iii requires this form to be lodged with the application. Whilst the Applicant repeatedly stated in answer to the FTT's requests to provide such as notice that he did not see why he should have to do so because he personally went to the Council with the notice documents and showed them to the Local Authority, ultimately he did not provide a S 11 document that meets the requirements of S 56 of the 2016 Act and of the Notices to Local Authorities (Scotland) Regulations 2008 as amended and S 11 (3) of the Homelessness etc. (Scotland) Act 2003. Thus the lodging requirement of rule 109 (b) iii is not met. Whilst it may be that the Applicant did personally attend the relevant Council offices, the FTT simply cannot proceed with an application for eviction without this document due to s 56 of the 2016 Act and the Applicant had been advised of the requirement to provide this document on more than one occasion.
5. As of 22.11.23 the documents required for a valid application under the rule under which the application was made are still not produced.
6. Because the requirements for lodging a valid application in terms of rule 109 are not met, it would not be appropriate for the Tribunal to accept the application, which essentially remains incomplete.
7. The application is accordingly rejected.
8. For the avoidance of doubt, this rejection does not prevent the Applicant to lodge a fresh application if he so wishes once he is in a position to produce the required evidence, documents and notices.

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 McFatridge
Legal Member
22 November 2023