



Decision with Statement of Reasons of Helen 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/23/2888

Parties:

Susan Lynne McMichael ("the Applicant")

Andrew Thompson ("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 was made under Rule 109 and was received on 22nd August 2023. The Applicant was seeking an eviction order.
2. The Tribunal considered the application and wrote to the Applicant requesting the following information on 15th September 2023:
 - Please provide evidence of landlord registration.
 - Grounds 8 and 8A do not relate to rent arrears. The Notice to Leave ("NTL") produced indicates that ground 12 is relied upon. Please advise whether you wish to proceed on the basis of ground 12 and if so, provide an amended form E. Your application form indicates that you may wish to proceed on additional grounds of eviction, but no other grounds have been mentioned on the NTL. If you wish to proceed on any additional grounds, you should advise on what basis you consider the Tribunal should grant



permission to proceed on grounds of eviction not mentioned in the NTL.

- Please provide your comments on the validity of the NTL, given that the start date of the tenancy agreement does not accord with the date entered at Part 1 of the NTL.
- You should provide evidence of service of the NTL on the tenant. This may take the form of a statement setting out when and how the NTL was served and by whom.
- Please provide any available evidence of compliance with the pre-action protocol in relation to rent arrears.
- Please provide a copy of the section 11 notice served on the local authority, as required by section 56(1) of the Private Housing (Tenancies) Scotland Act 2016, together with evidence of service on the local authority.

Please reply to this office with the necessary information by 29 September 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 29th September 2023, the Applicant requested further time to take advice.
4. By email dated 30th October 2023 the outstanding information was again requested from the Applicant.
5. No response was received from the Applicant.
6. The application was considered again by a Legal Member on 12th December 2023.

Reasons for Decision

7. 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;

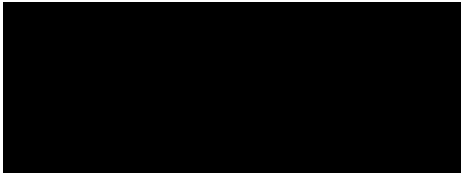
(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

8. The Tribunal has requested further information from the Applicant in order to consider whether or not the application can be accepted. The Applicant has failed to respond to the Tribunal's request for further information and documents.
9. In particular, the Applicant has failed to provide the notice required by section 56 of The Private Housing (Tenancies) (Scotland) Act 2016 which provides that
 - (1) A landlord may not make an application to the First-tier Tribunal 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.
 - (2) Notice under subsection (1) is to be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.
10. Section 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. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
11. The application cannot proceed without the requested documentation and the Applicant has failed to respond to calls for the documentation. It would not be appropriate to accept 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.



12th December 2022

Legal Member/Chair

Date