



**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/23/3988

Parties

Mr Clark Pheely (Applicant)

Mr Scott McHolm (Respondent)

27 Covenant Cres, Larkhall, ML9 2EY (House)

1. On 8.11.2023 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules and stated as the grounds applicable grounds 1t.
2. The applicant lodged a copy of the tenancy agreement, the S 11 notice and email sending same, an explanation letter dated 7.11.23, a letter to the guarantor for the tenant, a sales agreement with for the property with DJ Falls & Co., some text messages and various letters to the tenant including a letter dated 6.8.23 in which he

refers to selling the property and giving the tenant an exit date of 29.10.23. He advised in a letter to the FTT dated 19.11.23 that the letter of 6.8.23 had been hand delivered.

3. On 1.12.23 the FTT wrote to the applicant in the following terms: 1. Please provide a copy of the Notice to leave which has been given to the respondent, with evidence that it was given. You have indicated that a Notice to quit was hand delivered. However, an application under Rule 109 must be accompanied by a notice to leave. This should be in the format prescribed by regulations or otherwise must comply with section 62 of the 2016 Act. The correspondence lodged does not appear to do this. 2. Please clarify if you are relying on ground 1, ground 1A or both. 3. If you are relying on ground 1A you must also submit evidence that the property is to be sold to alleviate financial hardship. 4. Please provide evidence that the section 11 notice was sent to the Local Authority.
4. On 10.12.23 the appellant replied as follows: Thanks for your email. I'll respond to your queries by number: 1. I was unaware that I had to give the tenant a letter in that format & used a letter that I have highlighted in my documents that I submitted. I also submitted text messages to back up that the tenant was in receipt of the letter. I done it this way as it's too expensive to get Sheriff Officers involved & the tribunal is supposed to be free. 2. I am selling the property on ground 1 only. 3. Ground 1 & a copy of the estate agents contract was submitted. 4. A copy of the email conformation was sent to you & I called last week & they confirmed that it was in the batch of documents that I sent last month. I have to add that I'm in more need than ever to sell this property as the tenant has stopped paying the rent & I have sent a letter to the Guarantor & received no response.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 7. 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 document required in terms of rule 109 (b) ii was not provided, despite the FTT having requested this.
2. The Applicant has provided a document he described as a Notice to Quit. The Tribunal considers that what is required in terms of rule 109 (b) ii is a valid Notice to Leave as defined in S 62 of the Act. S 62 (1) (d) requires the notice to fulfil any other requirements prescribed by Scottish Ministers. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended set out the format and information necessary for a Notice to Leave. The notices sent by the Applicant are not in the prescribed format and do not give the information stated in the statutory form regarding advice and notice periods and does not provide the statutory information required in part 4 of a Notice to Leave.
3. It is unfortunate that the applicant was not aware that a Notice to Leave has to be given in a specific format and comply with the requirements of S 62 of the 2016 Act and The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended. However, without a Notice to Leave in the required format and providing the

required information, the FTT cannot accept the application. Whilst the letter the applicant hand delivered to the tenant provided an end date and a reference to the ground for the notice being that the landlord wishes to sell the property, it did not provide all the information required and specifically the advice part set out in schedule 5 pertaining to regulation 6 of the above regulations. It did not state which organisations the tenant could contact for advice and did not set out the requirement for the landlord to apply to the FTT for an eviction order should the notice period expire and the tenant not move out. It did not state on which date the applicant could first apply to the FTT for an eviction order. The document is not a Notice to Leave as required in rule 109.

4. 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 remains incomplete. As the applicant confirmed that this was the only notice given to the tenant, there was no requirement for the FTT to ask for further information.
5. The application is accordingly 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 McFatridge
Legal Member
12 January 2024