



**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/23/2616

Parties

Mr Zia ud din Mohammad (Applicant)

Mr Timothy Brooks (Respondent)

35 Blackstoun Oval, Paisley, Renfrewshire, PA3 1LR (House)

1. On 3.8.2023 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 3, 4 and 4A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
2. The Applicant provided a copy of an unsigned and undated Notice to Leave stating as the grounds ground 3 and 4 and stating as the date when an application could first be made in part 4 of the notice the date of 20.3.2023. There was a note stating the Notice to Leave was posted some time in December 22 or January 23 and the

Applicant could not remember and had no other record.

3. The FTT wrote to the Applicant on 24.8.2023 in the following terms: “1. You have stated that you do not know when the Notice to Leave was served, but you must provide evidence to show how and when the Notice to Leave was served upon the Respondent. If it was served by email, please provide a copy of the email. If it was served by recorded delivery, please provide a copy of the posting receipt and tracking information to show receipt. 2. Please provide a copy of the tenancy agreement. 3. Please provide a copy of the section 11 notice together with evidence of service upon the local authority. 4. You must provide evidence to support the grounds of eviction. The legislation mentions the following as examples of the type of evidence to be lodged for the grounds on which you wish to proceed: Landlord intends to refurbish (a)any planning permission which the intended refurbishment would require, (b)a contract between the landlord and an architect or a builder which concerns the intended refurbishment. Landlord intends to live in property: An affidavit stating that the landlord has that intention. Landlord intends to live in property to alleviate financial hardship (a)a letter of advice from an approved money advisor or a local authority debt advice service, (b)a letter of advice from an independent financial advisor, (c)a letter of advice from a chartered accountant, (d)an affidavit stating that the landlord has that intention.’ Please reply to this office with the necessary information by 7 September 2023. If we do not hear from you within this time, the President may decide to reject the application.
4. On 7.9.2023 the Applicant provided a copy of a tenancy agreement between the Respondent and Ahuja Holdings commencing 9.5.2018 for the property. He also provided some photographs of the property.
5. On 4.10.2023 the FTT again wrote to the Applicant as follows: “It is again noted that you are unable to produce a copy of a signed and dated notice to leave nor are you able to give any information relating to the date upon which this notice was served upon your tenant. You are also unable to prove the method of delivery of the notice to leave. Please explain the basis upon which you believe this tribunal can proceed with your application in the absence of any evidence showing that a notice to leave was actually served upon the tenant. In the absence of any such submissions from you providing a legal basis for this tribunal to proceed, it appears that the tribunal

has no alternative but to reject your application on the basis that there is no evidence that any valid notice to leave has been served upon the tenant. Such evidence is a requirement of the relevant law in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 . The tribunal also acknowledges a copy of the tenancy agreement. It is noted that you are not named as a landlord in the tenancy agreement. You indicate in your application that you purchased the property from a previous landlord.. Can you please provide evidence that you intimated the change of landlord to the tenant. You have also failed to produce a copy of the notice given to the local authority as required under section 11(3) of the Homelessness etc. (Scotland) Act 2003 and evidence of that being given to the local authority as required under section 56 (1) of the 2016 Act. Please do so now. We would strongly advise you to seek independent legal advice on this matter. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this office with the necessary information by 18 October 2023. If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017”

6. No reply was received. The FTT again wrote on 21.11.2023 stating that a reply and further information was required and advising the Applicant that it was likely that the application would be rejected otherwise.
7. No reply was received by 5.12.2023, which was the date stated as the deadline for a reply on the letter. No further reply has been received by 25.1.2024.
8. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

9. 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."

10. 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) i, ii and iii were not provided, despite the FTT having requested these.
2. The Applicant has provided a document described as Notice to Leave. However, it is not possible to ascertain if this was a valid Notice to Leave as it was undated and unsigned and no evidence of when it was served was provided. The form, which is a statutory form, was thus not fully completed as it was not dated and signed. No specific information about the missing date was provided and the Applicant stated this would have been some time in

December 22 or January 23. This is not specific enough to replace a date on the document. In the absence of a fully completed version of the document and evidence of service the Tribunal considers that the requirement to lodge a Notice to Leave has not been met.

3. 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. Despite repeated requests for him to do so, the Applicant has not provided this document and has given no indication that the local authority was in fact notified as required. Thus the lodging requirement of rule 109 (b) iii is not met.
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 to date remains incomplete.
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

25 January 2024