



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/23/2820

Parties:

Andrew Christopher Conn ("the Applicant")

Maureen McConway ("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. A Legal Member of the Tribunal considered the application and wrote to the Applicant requesting the following information on 4th September 2023, allowing a period of 14 days for a response:
 1. A copy of the tenancy agreement.
 2. A copy of the notice to leave served on the tenant, along with evidence of service.
 3. 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, along with evidence of service of the notice on the local authority.
 4. Evidence demonstrating that the ground of eviction has been established.
 5. There is a joint owner and landlord. Please advise whether that individual is to be a joint applicant or alternatively provide a written



mandate from the joint owner/landlord consenting to the applicant to make the present application.

2. By email dated 30th October 2023, the Applicant representative lodged a copy of the tenancy agreement, a Recorded Delivery receipt, copy Notice to Leave, rent statement, authorisation from the joint owner, and section 11 notice.
3. The application was considered by a Legal Member and a further notification was sent to the Applicant on 31st October 2023 in the following terms, and including reference to an additional application lodged under Rule 65:

You have now submitted a copy of Private Residential Tenancy Agreement which appears to refer back to a short assured or an assured tenancy, an incomplete Notice to Leave dated 3 September 2023 (the relevant dates are not included in it), proof posting dated 3 July 2023 purporting to send a Notice to Quit.

You have not sent the Notice to Quit nor have you sent the short assured or an assured tenancy nor proof of sending and proof of receipt for the Section 11 Notice, the copy of which is not clearly legible. Further, the date of posting of the purported Notice to Quit is two months later than the date on which the first application was lodged and the date of the Notice to Leave is one month later than the date on which the second application was lodged.

You have not sent evidence of the grounds for eviction which you also must do.

The correct documentation is required for whichever application you decide to proceed with. The Tribunal cannot advise you which you should choose, nor can the Tribunal advise you on preparation of the documentation. You would be advised to seek legal advice.

Please either provide the correct information by 15 November 2023 for one of the applications and withdraw the other one or withdraw both by that date.

4. By email dated 15th November 2023, the Applicant representative withdrew the Rule 65 application and resubmitted the original supporting documentation.
5. The application was considered by a Legal Member and a further request for information was issued on 11th December 2023, in the following terms:

Further to your further responses to the Tribunal's request for further information dated 1 November 2023, a legal member of the Tribunal with



delegated powers of the Chamber President has further considered the application and has determined that most of the information required has still not been submitted, or is unsatisfactory for various reasons, as follows:-

1. You appear to have simply re-submitted the documentation that you previously lodged, without responding to the request for further information or clarifying the matters requiring further explanation from you.

2. The Notice to Leave more recently submitted appears to be the original copy submitted, but with a date amended. You must provide to the Tribunal a true copy of the Notice that was sent to your tenant as the Notice to Leave is an essential legal document in the eviction process.

3. The Section 11 Notice and proof of sending of this are still not legible. If clearer copies cannot be provided via email, may we suggest that you consider submitting hard copies of this documentation by post to the Tribunal, remembering to quote the application reference number.

4. You have not clarified the position regarding the type of tenancy and the various notices (Notice to Quit, Notice to Leave, etc.).

5. You have not provided evidence in support of the ground of eviction – substantial rent arrears Ground 12A. In response to your query regarding this, it is confirmed that the Tribunal needs to see proof of the amount of arrears and how these have arisen, normally by the Applicant producing a Rent Statement, bank statements or something similar. You could also produce copies of any communications with your tenant regarding rent arrears.

You have previously been advised that the Tribunal cannot provide a party with legal advice as the Tribunal is an impartial body. Evictions are a complex, technical process and there are various legal requirements which must be satisfied before an application can be accepted and progress any further. It is again suggested to you that you may wish to seek legal or other advice from an advice agency in relation to this application. Please respond within the next 14 days, failing which it is likely that this application will be rejected.

6. By email dated 18th December 2023, the Applicant representative requested further time to respond. An extension was allowed to 2nd January 2024. No further information or documentation was received from the Applicant.

7. The application was considered by a Legal Member on 30th January 2024.



Reasons for Decision

8. 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."

9. 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. It is not clear that Rule 109 is the correct rule for the application as the type of tenancy is unclear, the section 11 notice is illegible, the Notice to Leave appears to have been amended with no explanation, and no evidence has been lodged to support the ground of eviction, as required by Rule 109.
10. There is good reason to believe it would not be appropriate to accept the application. 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.



30th January 2024

Legal Member/Chair

Date