



**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/23/2190

Parties

Mr David Wood (Applicant)

Miss Susan Greens (Respondent)

Key Contacts Letting Solutions (Applicant's Representative)

5 Carlops Crescent, Penicuik, EH26 0DW (House)

1. The application for an eviction order in terms of Rule 109 of the Procedural Rules was received by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) on 30.6.2023.
2. The documents lodged with the application were: a copy of a tenancy agreement between Emma and David Wood as the landlords and Susan Green as the Respondent commencing on 13.3.2019 and a copy of a notice to leave issued under ground 1

dated 24.4.23 with the date of 20.7.23 entered in part 4.

3. On 4.8.2023 the FTT wrote to the applicant requesting the following information by 18.8.2023: "Before a decision can be made, we need you to provide us with the following: 1. There are joint owners and landlords. Please amend to include both or provide written authorisation from both for you to act in this matter and pursue in the Applicant's sole name. 2. Please provide proof of landlord registration. 3. Please provide proof of service of the Notice to Leave on the Respondent. 4. Please provide a copy of the section 11 Notice and proof of service on the local authority. 5. Please provide evidence in support of the Ground relied upon such as signed terms of engagement with a solicitor or estate agent. Please reply to this office with the necessary information by 18 August 2023. If we do not hear from you within this time, the President may decide to reject the application.
4. No reply was received.
5. Further requests for the same information were sent on 18.9.2023 and 21.11.2023, the latter requesting a reply by 5.12.2023. The letters advised of the possibility of a rejection of the application should the requested information not be provided.
6. As of 25.1.2024 no reply has been received and no further documents have been lodged.

DECISION

1. 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."

2. 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.

Relevant Legislation

Application for civil proceedings in relation to a private residential tenancy

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord;

(ii) the name, address and profession of any representative of the landlord;

(iii) the name and address of the tenant; and

(iv) the ground or grounds for eviction;

(b) be accompanied by—

(i) evidence showing that the eviction ground or grounds has been met;

(ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c) be signed and dated by the landlord or a representative of the landlord.

REASONS FOR DECISION

1. S 56 of the 2016 Act specifically states "A landlord may not make an application to the First-tier Tribunal for an eviction order against the 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. 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. " The required notice has not been provided and thus the requirement for a valid application to the FTT set out in S 56 of the 2016 Act has not been complied with. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. This was not provided.
2. The FTT had given the applicant the opportunity to lodge the missing documents. These have not been lodged.
3. Given that the application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules, it would not be appropriate for the Tribunal to accept the application.
4. The application it is therefore 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