



Decision with Statement of Reasons of H 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/24/0052

Parties:

James Mckechnie ("the Applicant")

Lorraine Houston ("the Respondent")

Tribunal Member:

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. An application for an eviction order was made under Rule 109 on 5th January 2024, with associated documents.
2. A request for further information was made to the Applicant on 5th February 2024 as follows:

The notice to leave you have provided is dated 6 December 2023 and it was served by depositing on 7 December 2023. This means that section 62 of the Private Housing (Tenancies)(Scotland) Act 2016 has not been complied with as only 29 days notice has been given rather than 31 (28 plus 2 days plus one day). Please provide your submission regarding the validity of the notice to leave given the correct notice period has not been given. Alternatively withdraw the application or provide another notice to leave with the correct notice period.

3. By email dated 14th February 2024, the Applicant provided an updated rent statement but failed to provide the requested information.



4. A Legal Member of the Tribunal considered the application and a further request for the information was sent to the Applicant on 15th March 2024.
5. By email dated 15th March 2024, the Applicant responded:

I hope I'm correct in my timescale but if not I would still like my case to be considered for the following reasons. The respondent has already been given notice on case 23/0041 which has been accepted. The rent arrears are substantial. The respondent has not paid rent for the last two months and the arrears will have to be addressed in the near future. The respondent already has a wages arrestment in place. With the greatest respect I would request that this case be heard in conjunction with case 23/0041 if possible.

6. A Legal Member of the Tribunal considered the application and a request was sent to the Applicant on 18th March 2024, as follows:

1. It is not clear why you have submitted 2 applications. The correct procedure is to submit one application based on several grounds, if more than one ground applies. If you have served more than one Notice to leave then these can be lodged with that application. You only require one eviction order so 2 applications are not required.

2. As previously advised the Notice to leave on ground 12 appears to be invalid because it does not give the correct period of notice. As it was not served until 7 December the date in the notice should have been 5 January 2024. In these circumstances, this application is likely to be rejected.

There are two options

1. You could withdraw this application and seek to amend the other application (0041) to include ground 12. You would require to re-submit the rent statement and other documents in connection with the correct reference number. You should do this immediately as there are time limits for amendment of applications. However, if you submit the notice to leave the Tribunal may not be able to consider it due to the wrong notice period. However, you can ask the Tribunal to consider ground 12 even if it was not in a valid notice to leave and they might agree to do so, or

2. You can withdraw this application, re-serve the notice to leave on ground 12 and lodge a further application after expiry of the notice period. You would not require to do this if the other application is



successful. You may wish to take legal advice before you respond. Please respond within 14 days or your application may be rejected

7. By email dated 21st March 2024, the Applicant responded:

I received the latest email explaining my options moving forward so I'm hoping to clarify things as I think the last email from you was written before my previous emails dated 15th and 19th March. I respectfully request that case 0052 be considered alongside case 0041 as the correct notice to leave was given in 0041 and the arrears are substantial (£3347.40p as of 1/3/2024) and no rent paid since 1/12/2023. I am also very worried about amending 0041 as these procedures are complicated for me and I can't afford to muck this up. Incidentally, I sought and paid for advice and followed it to the letter only to now find it wasn't correct, which I apologise to the chamber for. I hope the chamber finds this acceptable and see this as me acting in good faith

8. The application was considered by a Legal Member on 16th April 2024.

Reasons for Decision

9. 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."

10. The Applicant has failed to provide a valid Notice to Leave served upon the Respondent before making the application. In terms of section 62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), the Notice to Leave must specify the day on which the landlord under the tenancy in

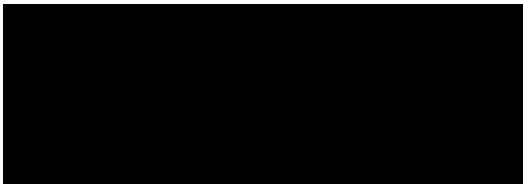


question expects to become entitled to make an application for an eviction order to the First-tier Tribunal. In the Notice to Leave at Part 4, it is stated that the date on which the landlord would be entitled to make an application for an eviction order was 4th January 2024. This is incorrect. Given that the Notice to Leave was served on the Respondent on 7th December 2023, the correct date on which the landlord would be entitled to make an application to the Tribunal would be 5th January 2024. The Notice to Leave cannot be considered to be a valid Notice to Leave as required by section 62 of the 2016 Act.

11. 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.



Legal Member/Chair

16th April 2024

Date