



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE
CHAMBER PRESIDENT**

Under Rule 8 and 5 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/23/3459

Parties

Mr Roy Wolfin (Applicant)

Mr Dawid Nykiel (Respondent)

Guardian Lettings & Sales Limited (Applicant's Representative)

408 Bellshill Road, Motherwell, ML1 3SR (House)

1. On 29th September 2023, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for eviction of the Tenant by the Landlord. The Applicant was seeking eviction in terms of Ground 12 that the tenant had been in arrears of rent for 3 consecutive months.
2. The Applicant lodged a copy of a Notice to Leave addressed to the Respondent citing Ground 12 and dated 14th July 2023 and specifying a date of 13th August 2023 as the date after which the landlord will be entitled to make an application for eviction. The Applicant also lodged a rent statement and copy letter confirming the notice to leave was "hand delivered" by posting it through the tenant's letter box.

3. The Tribunal requested further information from the applicant by e-mail dated 7th November 2023. The Tribunal asked for the following information in respect of this application:- *“I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, we need you to provide us with the following: The notice to leave (NTL) which you have provided appears to be dated 14 July 2023 and indicates you will not apply to the tribunal for an order prior to 13 August 2023. Can you consider the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) and confirm whether the NTL meets the requirements of those sections with particular regard to both the required period of notice to be given and the effective date to be inserted into a NTL and whether it should be regarded as valid. You should also note the specific terms of section 62(5) which indicate it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent. If your notice has not given the required period of notice on what basis can the tribunal proceed if it is invalid? You have not lodged a copy of the notice which is required to be given to the local authority under section 11(3) of the Homelessness etc. (Scotland) Act 2003 nor have you provided any evidence of the method and date on which that was given to the local authority as required under section 56 (1) of the Private Housing (Tenancies) (Scotland) Act 2016. Please do so now. Please note the terms of the attached letter relating to the potential impact on your application of the Cost of Living (Tenant Protection) (Scotland) Act 2022 Please reply to this office with the necessary information by 21 November 2023. If we do not hear from you within this time, the President may decide to reject the application.”*
4. The Applicant responded on 22nd November 2023 and asked “Good morning Can you confirm is the notice invalid for the period we have requested? Please advise?”. The Tribunal case worker responded advising that *“Unfortunately, the Tribunal are unable to provide you with any legal advice or guidance as we are a fair and impartial body. We can however direct you to the relevant section of our website where you can find links that you may find useful in seeking your own independent advice: <https://www.housingandpropertychamber.scot/useful-links>. The time to respond to the information request sent 07 November 2023 has now expired. I*

have sent the case file back to the Chamber President for further review, following usual protocol. If you find yourself in a position to respond please do so and I shall update your file and the Chamber President.”

5. The Tribunal wrote again to the Applicant on 21st December 2023 and stated *“Your application and your e-mail dated 22 November 2023 has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following: 1. It would appear that the method of service of the Notice to Leave is not one allowed for by the legislation. If a Notice to Leave is to be served by hand, it must be served personally upon the Respondent, and not by posting through the letterbox. It is for you to decide whether to make legal representations stating why the application should be accepted, given the method of service, or to consider withdrawing the application and serving a further Notice ensuring that it is served correctly. You may wish to take advice in this regard. 2. You have not provided a section 11 notice in terms of the Homelessness etc. (Scotland) Act 2003 nor have you provided any evidence of the method and date on which that was given to the local authority as required under section 56 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 Please reply to this office with the necessary information by 4 January 2024. If we do not hear from you within this time, the President may decide to reject the application.”*
6. The Applicant failed to respond and the Tribunal wrote once more on 12th February 2024 sending another reminder stating *“The attached email was issued to you on 21 December 2023. Administration notes no response has been received. Please reply to this office with the necessary information by 19 January 2024. If we do not hear from you within this time, the President may decide to reject the application.”*

7. DECISION

8. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-
9. *"Rejection of application*

Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47, to 50, 55, 59,61,65, to 70,72,75 to 91, 93 to 95,98 to 101,103 or 105 to 111 as appropriate.

(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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 on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

11. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-
"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

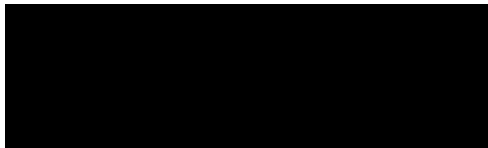
12. The applicant has lodged a notice to leave and advised that this has been served by posting through the Respondents letter box at the Property address. This is not a valid method of service as it does not constitute hand delivery. The Applicant has not provided any legal submissions under which the Tribunal could consider this to be valid notice. In addition the Applicant has failed to provide the S11 notice that requires to be served on the local authority and requires to be lodged to satisfy Rule 109. Given the notice to leave is not valid as it has not been validly served and given the requirements of lodging have not been met, this application has no prospect of success.
13. In addition the applicant has failed to respond to the Tribunal's substantive requests for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received and I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.
14. For the above reasons I consider that this application is misconceived, has no hope of success and therefore it must be rejected.
15. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.
16. It is open to the Applicant to reapply if he validly serves a new notice to leave with the appropriate notice period given and lodges it with an appropriate s11 notice. The Applicant may wish to seek advice on this before doing so as matters relating to evictions are complex.

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.



Legal Member
19th March 2024