



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/23/4201

Parties:

Ross Fenton ("the Applicant")

Nicola Fenton ("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 65 on 23rd November 2023 with associated documents.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant on 28th December 2023 stating the following:

Before a decision can be made, we need you to provide us with the following:

1. You have raised the application under Rule 65, which rule applies where you are seeking an order in relation to an assured tenancy. However, the tenancy agreement you have provided is headed up as being a Private Residential Tenancy (PRT) and you appear to have served a Notice to Leave (which is only relevant to a PRT). Please confirm (i) what type of tenancy you consider you have in existence and (ii) if you wish to raise an application under Rule 109 instead, to seek an order for repossession of a PRT? If you wish to do so, you will require to submit an amended application form.



2. The PRT Agreement lodged has a start date of 1 June 2015. Please explain how this can be the case, when PRT Agreements did not come into existence until December 2017, in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and therefore did not exist in June 2015? Please clarify when your tenants moved into the property and when this agreement was signed?

3. Your application form refers to relying on ground 10 – but your Notice to Leave refers to Ground 1. Please clarify the basis of the ground you are relying upon and under which Act?

4. Your Form AT6 does not state a ground which exists under Schedule 5 of the Housing (Scotland) Act 1988. This notice is only relevant if you consider you have an assured tenancy. As above, if you consider that you have in place a PRT (and this is subject to the responses you give above) please clarify which ground under the 2016 Act you intend to rely on? You may wish to seek legal advice in relation to the issues raised.

Please reply to this office with the necessary information by 11 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 28th December 2023, the Applicant responded:

Can clarify we originally had signed the tenancy agreement in June 2015 when the tenants moved in and they have been since then. We lost the paper agreement and contacted the council in Dundee they advised both of us to fill out a new one to cover ourselves which is the one we sent out to yourselves so to clarify should be an assured but on prt paperwork this has been confirmed with the council also for there homeless paperwork.

I followed the guidelines on the grounds as best I could and sorry if wrong but I had

Ground 1 - landlord intends to sell the property

Ground 10 - the tenant has given notice to quit which has expired and yet has stayed in the house

I'm sorry if they should've been on both forms ?

4. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant on 1st February 2024 stating the following:

The tribunal notes the terms of your email of 28 December.



You have still not answered the questions which were posed by the tribunal, asking you to confirm what type of tenancy you believe exist between you and your tenants.

You have still not provided evidence of the method of the service of the required notices upon your tenants.

If your tenancy started in 2015, it cannot be a private residential tenancy. It will have been an assured or short assured tenancy, therefore the notice to leave which you have served is of no effect. There are specific rules relating to the appropriate notices which require to be served where are landlord is seeking an eviction order under and in terms of an assured or short assured tenancy.

Unless and until you provide to the tribunal evidence of the service of correct and proper notices upon your tenants, then the tribunal cannot progress this application. The tribunal is an independent judicial body and cannot provide you with advice on these matters.

We would respectfully suggest that you seek independent legal advice on these issues prior to responding fully and properly to the previous requests which have been sent to you by the tribunal.

Please respond to this letter by 15 February 2024.

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.

No response was received.

5. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant on 14th March 2024 stating the following:

Please note that the application cannot be accepted in its current condition. You must clarify the status of the tenancy. Either it is an assured tenancy that started in 2015. If this is the case you must provide all of the documents required in terms of this Rule and confirm the application should proceed in terms of Rule 65. However, if you are of the view that both parties agreed to convert the tenancy to a PRT you should confirm the date that the new agreement was signed, with evidence. This cannot have been 2015. You should also provide



evidence that the tenants agreed to convert and that you wish to proceed under Rule 109. If so you will require to provide all of the documents required in terms of this Rule. Please also confirm that the application is to be made against both tenants – Steven Fenton and Nicola Arthur - as the application form does not state this. You may wish to take legal advice before you respond. Please respond by 28 March 2024 or it is likely that the application will be rejected.

6. The application was considered by a Legal Member on 23rd April 2024.

Reasons for Decision

7. 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."

8. The application cannot be accepted without the clarity and further information sought from the Applicant. The type of tenancy is unknown and the application cannot be progressed under the correct Rule without further information from the Applicant. Despite repeated requests, the Applicant has failed to provide the requested information and necessary documentation.
9. 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.

H Forbes

23rd April 2024

Legal Member/Chair

Date