



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 Reference FTS/HPC/EV/23/4421

Parties:

Kirsteen Critchlow ("the Applicant")

Corbett and Shields ("the Applicant representative")

Nicole Lincoln ("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 11th December 2023, with associated documents.
2. A request for further information was made to the Applicant representative on 12th December 2023 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- evidence showing that the eviction ground or grounds has been met;
- a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act;



- evidence of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant
 - evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority
3. By email dated 13th December 2023, the Applicant representative provided the requested information.
4. A Legal Member of the Tribunal considered the application and a request for further information was sent to the Applicant representative on 18th January 2024 as follows:
- Please provide a signed copy of the Notice to Leave together with evidence that the Notice has been served on the tenant (e.g. postal slip, covering email, etc).
 - Please provide evidence that the section 11 notice has been sent to the local authority (e.g. postal slip, covering email, etc).
 - Please provide a copy of the signed tenancy agreement between the parties.
 - You have selected grounds 11 and 12 on the Notice to Leave. It appears that you are seeking an eviction order on the basis of rent arrears. Ground 12 can be relied upon where a tenant is in arrears of rent. However ground 11 only applies where the tenant has breached a term of the tenancy agreement that does not relate to the payment of rent. Please also provide an amended application Form E confirming in section 5 which ground(s) you are relying upon. If you wish to rely upon ground 11 please also provide evidence of the tenant's breach of any terms of the tenancy agreement, other than the obligation to pay rent.
 - The tenancy agreement confirms the landlord's as Marcus and Kirsteen Waugh-Critchlow. However the application is in the name of Kirsteen Critchlow. Please provide written consent from Marcus Critchlow, confirming he is in agreement with the action being taken. Alternatively please amend Form E to include Marcus Critchlow as a joint applicant.
 - Please provide written consent from Marcus and Kirsteen Critchlow authorising you to represent them in the proceedings.



Please reply to this office with the necessary information by 1 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. By email dated 19th January 2024, the Applicant representative provided some of the information requested.
6. A Legal Member of the Tribunal considered the application and a request was sent to the Applicant on 20th February 2024, as follows:

Thank you for your response to the Tribunal's enquiry. However, you have not provided a copy of the notice to leave which is signed and dated on the final page, nor evidence of a track and trace receipt to show that the notice to leave was delivered to the Respondent. Please now provide this information.

Please reply to this office with the necessary information by 5 March 2024. If we do not hear from you within this time, the President may decide to reject the application.

7. By email dated 21st February 2024, the Applicant representative provided a recorded delivery posting receipt dated 1st August 2023.
8. A Legal Member of the Tribunal considered the application and a request was sent to the Applicant on 20th March 2024, as follows:

With regard to case ref EV/23/4421 you have still not provided a copy of the notice to leave which is signed and dated on the final page and which has been properly completed. Please do so now.

9. By email dated 21st March 2024, the Applicant representative lodged a further Notice to Leave dated 21st March 2024 together with evidence of service. The Notice to Leave was served on 21st March 2024 by email and the date stated at Part 4 was 19th April 2024.
10. The application was considered by a Legal Member on 16th April 2024.

Reasons for Decision

11. 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."

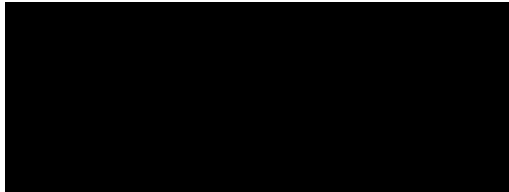
12. The Applicant has failed to provide a valid Notice to Leave served upon the Respondent before making the application. In terms of section 62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), the Notice to Leave must specify the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal. The undated Notice to Leave does not include a date at Part 4 and cannot be considered to be a valid Notice to Leave as required by section 62 of the 2016 Act.
13. The Tribunal cannot accept the second Notice to Leave as it was not served on the Respondent before the application to the Tribunal was made. Furthermore, the second Notice to Leave fails to give the correct period of notice as required in terms of the 2016 Act, as the period of 48 hours which must be added for email service has not been included when calculating the date to be inserted at Part 4. It also fails to provide the requisite specification at Part 3.
14. 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

Legal Member/Chair

16th April 2024

Date