

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/24/0970

Parties:

Dawn Stephen ("the Applicant")

Diane Stephen ("the Applicant representative")

Michael Angus ("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 within the meaning of Rule 8(1)(c) of the Procedural Rules.

Background

1. An application made under Rule 109 was received on 28th February 2024 with associated documents. An eviction order was sought under Grounds 11, 12 and 12A.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant representative requesting further information on 20th March 2024 as follows:

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

- An address for the Applicant. A c/o address cannot be used.
- Evidence that the section 11 notice was sent to the Local Authority.
- Evidence of service of the Notice to leave. The statement you have lodged states that it was delivered on 23 February 2024. This would not have given the respondent the correct period of notice.
- A rent statement that shows the rent due, all payments made and the running monthly total outstanding for the whole period of the arrears.

- Evidence in relation to ground 11. Please note that this ground cannot be used for rent arrears.
- Evidence of compliance with the rent arrears pre action protocol.
- A mandate authorising you to make the application on the Applicant's behalf.

Please reply to this office with the necessary information by 3 April 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 21st March 2024, the Applicant representative responded as follows:

Is it possible to remove ground 11 as I mistakenly assumed that was relating to rent arrears. There is ground 12 & 12A on the application form.

The receipt of delivery of the notice to leave. The letting agent mistakenly entered the wrong date, the 23 Feb when it was delivered on the 23 January. There is an email to the tenant sent on the 23 Feb stating it was delivered on the 23rd Jan, I will attach a copy. Please advise if this is sufficient.

4. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant representative on 20th March 2024 stating the following:

1. As previously requested please provide the actual address of the Applicant.

2. As previously requested please provide a mandate authorising you to act on behalf of the Applicant.

3. As previously requested please provide evidence how the pre-action requirements were complied with.

4. As previously requested please provide evidence of personal service of the Notice to Leave on 23 January 2024. Currently the signed service confirmation confirms it was delivered on 23 February 2024 and thus the notice would be invalid. The email you sent is not confirmation of the service of the notice.

5. As previously requested please provide evidence how and when the S 11 notice was given to the Local Authority.

6. As previously requested please provide a rent statement in the format: date, rent due, rent paid, running total of arrears to show all rent arrears.

You had already been asked for this information. Should this not be provided it is likely that the application will be rejected.

No response was received.

5. A further request for the outstanding information was sent to the Applicant representative by email dated 23rd April 2024. No response was received.
6. The application was considered by a Legal Member on 28th May 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;

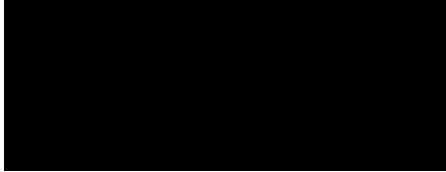
(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

8. The Procedural Rules in respect of a Rule 109 application require that the Applicant's address be provided, and that evidence to support the ground of eviction be submitted. Neither has been provided with this application despite repeated requests for further information. Furthermore, it is not clear that service of a valid notice to leave was made upon the Respondent as required by the Private Housing (Tenancies) (Scotland) Act 2016. In all the circumstances 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.



28th May 2024

Legal Member/Chair

Date