



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 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/24/0699

Parties

Hercules (scotland) ILD (Applicant)

Mr Richard Shankland (Respondent)

115 Gleddoch Road, Glasgow, G52 4BA (House)

1. On 12.2. 2024 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109. Rule 109 relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). The grounds stated on the application is ground 5. The following documents were

provided: notice to leave dated 15.11.2023 on ground 5 only stating as the date proceedings could first be raised 10.2.2024, tenancy agreement between the parties commencing 1.8.2018, S 11 Notice partially completed.

2. The FTT administration requested confirmation of how the Notice to Leave had been served. On 14.2.2024 the Appellant's representative provided the email sending the S 11 notice and the email dated 15.11.2023 sending the Notice to Leave to the Respondent.
3. On 12.3.2024 the FTT wrote to the Applicant's representative in the following terms:
A legal member of the First-tier Tribunal with delegated powers of the Chamber President considers that in order for the Tribunal to be able to process your application further the undernoted information /documentation is required:
1. Please provide the address and contact details of the applicant. In the case of a limited company this should be the registered address of the company.
2. If Ms Houston is the letting agent and not an individual actually linked to the applicant company please note that her details would have to be entered in the agent category. You have not provided authorisation of the agent by the applicant to represent them in the making of this application, please do so now.
3. If Ms Houston is directly involved with the applicant company please provide evidence of her role and position in the company.
4. The S 11 notice has not been fully completed. The legislation under which the application is made is missing. Please provide a fully completed S 11 notice to the local authority and evidence to the Tribunal that this has been done. Please also note that the email sending the previous S 11 notice did not show a date. Please ensure that when you supply evidence of how the complete S 11 notice was provided to the local authority you include information about the date it was sent.
5. You have not provided any evidence that the ground stated on the application applies. As the applicant is not a natural person but a limited company it is not clear how you could argue that a company can have a family member. Please make representations. You may wish to obtain legal advice on the matter before you reply.
4. The FTT asked for a reply by 26.3.2024 and informed the Applicant's representative that the application may be rejected if no reply is received. No reply was received. On 3.5.2024 the FTT again wrote asking for the information previously requested being provided. The FTT stated this would be due by 17.5.2024 and again stated if this was not received the application may be rejected. No reply has been received.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. I considered the application in terms of Rule 8 of the 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;

(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."

- 7. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

REASONS FOR DECISION

1. The lodging requirements for an application under rule 109 (b) include the requirement to lodge (i) evidence that the ground or grounds has been met, (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act, (iii) a copy of the

notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act

2. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents. The S 11 notice was only partially completed.
3. The most fundamental reason for rejecting the application under rule 8, however, is that the ground stated in the Notice to Leave and in the application has not been evidenced. The landlord, owner and applicant is a limited company, which is a separate legal entity. A limited company cannot have a family member to whom ground 5 could apply. It is not a natural person. The matter was raised with the Applicant and the opportunity provided to address the FTT on the issue. The Applicant has not replied to two requests for further information. As there was no evidence provided that ground 5 applies in this case, the application does not meet the lodging requirement of rule 109.
4. It is also of note that the Applicant and the Applicant's representative have not co-operated with the application process since March 2024 and ignored all correspondence. The FTT considers it likely that the Applicant is no longer insisting on the application.
5. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
6. The application is thus rejected.

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.

Petra Hennig McFatridge
Legal Member
6 June 2024