



**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/24/1054

Parties

Mr Hammad Arshad (Applicant)

Mr Sayed Shahab Gillani, Mrs Samina Bibi (Respondent)

Letsbwise Glasgow LTD (Applicant's Representative)

Flat 1/2, 52 Clifford Street, Glasgow, G51 1PB (House)

1. On 4.3.24 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable ground 1 of schedule 3 of the 2016 Act. The Applicant's

agent had not provided written authorisation from the Applicant.

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties, a Notice to Leave dated 16.10.23 with a date in part 4 stated as 9.1.24, a letter to each tenant and a service certificate by Sheriff Officers that the Notice to Leave had been served on both tenants on 16.10.23. The Notice to Leave did not give the name of the second named Respondent Mrs Samina Bibi but appears to state the second name as Mrs Sal. No other documents were provided.
3. The FTT wrote to the Applicant on 2 occasions requesting a copy of the S 11 notice and proof of that having been given to the local authority and requesting clarification regarding the Notice to Leave validity given the lack of the second tenant's name on the document and requesting a mandate for the agent. The last request was sent on 3.5.24 with a 10 day reply period.
4. There has been no reply by the Applicant to the requests for further information dated 27.2.24 and 3.5.24.
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 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. Although a Notice to Leave document was provided, this only states the name of one tenant, namely Sayed Shahab Gillani. As a Notice to Leave has to be issued to each joint tenant (S 78 (3) and S 52 (3) of the 2016 Act) the Notice to Leave provided is not sufficient to fulfil the requirement of the application being accompanied by a Notice to Leave.
3. 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 although the FTT had requested this information on two occasions.

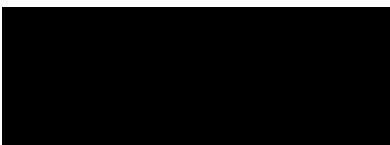
4. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
5. Furthermore, the agent has not provided a mandate to show that they are properly authorised to make the application before the Tribunal on behalf of the landlord.
6. Because the application at present does not fulfil the lodging criteria stated in the relevant rule it is rejected as it would not be appropriate for the FTT to accept an incomplete application.
7. For the avoidance of doubt, this decision does not prevent the Applicant lodging a fresh application once he has all the necessary documentation available.

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

27 May 2024