



**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/24/0022**

**Re: 112 Achray Road, Condorrat, Cumbernauld, G67 4JH ("the Property")**

**Parties:**

**Angelique Watt ("the Applicant")**

**Natasha Campbell ("the Respondent")**

**Tribunal Member:**

**Ms 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 is frivolous within the meaning of Rule 8(1)(a) and that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.**

**Background**

1. The application was received by the Tribunal under Rule 109 on 3<sup>rd</sup> January 2024 with copy tenancy agreement, notice to leave, section 11 notice and financial information.
2. The application was considered by a legal member of the Tribunal and by email dated 5<sup>th</sup> February 2024, the following information was requested from the Applicant:
  - 1) Copy written lease agreement.
  - 2) Proof of service of the notice to leave.
  - 3) Proof of service of the section 11 notice.

Please reply to this office with the necessary information by 19<sup>th</sup> February 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 16<sup>th</sup> February 2023, the Respondent lodged an email dated 1<sup>st</sup> December 2023 sending the notice to leave to the Respondent, and evidence of service of the section 11 notice upon the local authority.
4. The application was considered by a legal member of the Tribunal and by email dated 14<sup>th</sup> March 2024, the following information was requested from the Applicant:

The copy Notice To Leave (“NTL”) you have provided appears to be dated 1 December 2023 and indicates you will not apply to the tribunal until after 30 December 2023.

Can you please have regard to the relevant provisions in the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) and explain why the NTL meets the requirements of those sections with particular regard to both the required period of notice to be given and the effective date to be inserted into a NTL and whether it should be regarded as valid. You should also note the specific terms of section 62(5) which indicate it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent. The period of notice which you have given seems to have failed to provide the required period of notice and has also seemingly ignored both the assumption about when a notice is received and the requirement relating to the effective date to be inserted into such a notice. If your notice has not given the required period of notice, on what basis can the tribunal proceed if it is invalid?

The grounds upon which eviction is stated to be sought in the application form is Ground 4A, namely that the landlord intends to live in the let property to alleviate financial hardship. In terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, Rule 109, it is a requirement that an application for eviction is accompanied by evidence showing that the eviction ground has been met. The relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016 set out the types of evidence which might tend to show that the landlord has that intention. Can you please provide appropriate evidence supporting the ground upon which you seek to rely as set out in the relevant schedule to the 2016 Act.

In respect of ground 4A that evidence would be in the following terms, namely

- (a) a letter of advice from an approved money advisor or a local authority debt advice service,
- (b) a letter of advice from an independent financial advisor,

- (c) a letter of advice from a chartered accountant,
- (d) an affidavit stating that the landlord has that intention

Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. Please respond to this letter within the next two weeks.

You may wish to obtain independent legal advice on the matters contained in this letter.

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.

Please reply to this office with the necessary information by 28 March 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

- 5. A further opportunity to provide the information was afforded to the Applicant by email dated 29<sup>th</sup> April 2024. No response was received.
- 6. The application was considered by a legal member on 20<sup>th</sup> June 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. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*.
9. The application cannot be accepted as a valid notice to leave has not been served. The notice to leave is dated and served by email on 1 December 2023 and indicates at part 4 that the Applicant will not apply to the Tribunal until after 30 December 2023. The notice to leave does not meet the requirements of sections 54(2), 62(4) and 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016 with regard to both the required period of notice to be given and the effective date to be inserted into the notice. Section 62(5) provides that it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent. The period of notice given by the Applicant falls short of the required period of notice. The date inserted at part 4 of the notice to leave is incorrect, as the Applicant has failed to allow the 48 hours required for service by email. Furthermore, the Applicant has failed to provide the necessary evidence required in Rule 109 to show their intention in terms of ground 4A.
10. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. 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.**

# Ms H Forbes

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Legal Member/Chair

20<sup>th</sup> June 2024  
Date