



**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/24/2321

Parties

Miss Angela Hart (Applicant)

Mr Edward McCartan (Respondent)

67 Broadholm Street, Parkhouse, Glasgow, G22 6LP (House)

1. On 21.5.24 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 4A of schedule 3 of the 2016 Act. The Applicant stated she required the property after a relationship breakdown.
2. The application was accompanied by a Notice to Leave dated 21.2.24 with a date in part 4 stated as 15.5.24. Although the Applicant referred to a copy of the tenancy agreement being included, no other documents were provided.
3. The FTT wrote to the Applicant on 22.5.24 requesting evidence of the ground stated,

a copy of the S 11 notice and evidence this had been given to the local authority and evidence of how and when the Notice to Leave was served on the tenant. On 14.6.24 the FTT wrote again, adding that the date in part 4 of the Notice to Leave appeared to be one day short of the correct date and asked the Applicant to address this issue. The FTT also requested again the information previously asked for.

4. The Applicant replied on 14.6.24 Please find my reply below with regards each point:- (1) I entered the 15th as the wording states that an application will not be made before 15th May so I thought this meant the 16th, if I had put the 16th I thought I couldn't apply before the 17th – wording is a bit ambiguous here. (2)Can you advise what Rule 109 is please as I obtain all the forms from your own website (3)No worries this is my permanent address at present (4) I will get a statement from the witness and send this over to you (5) I did not know about this, although the council were made aware of this – does this invalidate my application? (6)Again not sure what Rule 109 is and I assume as the landlord I can advise that I wish to move back into the my property, although I am sure you will advise if I am not correct in my thinking here. I await your reply, please note that I am going on holiday between 22nd June and 8th July to visit my sister and daughter in the US.
5. On 12.7.24 the FTT wrote again in the following terms: Your application has been reviewed by a Legal Member of the Tribunal with delegated powers of the President. Please provide the following further information : 1. It is essential for the Tribunal to understand when and how the notice to leave was served on the tenant and to be provided with evidence of service. If the notice to leave was delivered personally to the tenant please confirm when this was done, whether the notice was handed directly to the tenant and whether the personal service was witnessed. If the notice to leave was served by other means please confirm the method of service and proof of service. Once the Tribunal has this information it can determine whether or not the notice to leave was validly served. 2. An application under rule 109 is an application for an order for an eviction order. 3. Please provide a copy of the tenancy agreement. 4. It is noted that the “care of “ address provided is your current address. 5. An application for an eviction order must be accompanied by a copy of the section 11 notice sent to the local authority and evidence of it having been sent to them such as a copy of the covering email. Please provide this. Please reply to this office with the necessary information by 26 July 2024.
6. On 18.7.24 the Applicant provided a letter from Caitlin Hart dated 12.7.24 confirming that she had witnessed the Applicant putting a the Notice to Leave document through the Respondent's letterbox. On 21.2.24. The Applicant did not provide the S 11 notice or proof of this having been given to the local authority or any documentation to evidence that the ground for the application has been met.
7. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

8. 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."

9. 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 was not correctly completed and served.
3. The service requirements are stated in S 26 (2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This requires either service “delivered personally to the person” or electronic communication or postal service in the manner set out in the section. None of these methods were used. Letterbox service is not an option contained in S 26 (2) above.
4. Furthermore, the date of 15.5.24 in part 4 does not take into account the requirement stated in S 62 (4) of the Private Housing (Tenancies) (Scotland) Act 2016, which requires the date stated to be the date after the day on which the notice period defined in section 54 (2) will expire. The correct date in this case would be 16.5.24.
5. The Tribunal has considered whether S 73 of the Act may be applicable in this case to assist the applicant. This states: (1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.
6. In the Tribunal’s view, the word “effect” in section 73 (and in the explanatory note) denotes the effect the notice is intended to have if it is completed without error. It follows from section 62(1)(b), (c) and (d) that a notice to leave completed without error will give the tenant certain information, namely: 1. 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 FTT, being the day after the notice period expires (section 62(1)(b)). This date is stated in part 4 of the prescribed form, in which the tenant is expressly advised that “An application will not be submitted to the Tribunal for an eviction order before [the date]”, 2. The eviction ground on which the landlord intends to seek an order (section 62(1)(c)), which is indicated by ticking the appropriate box in part 3 of the prescribed form, 3. Details and evidence of the eviction ground (section 62(1)(d) and part 3 of the prescribed form, 4. The tenant’s details (section 62(1)(d) and part 1 of the prescribed form), 5. The name, address and telephone number of the landlord or his agent (section 62(1)(d) and part 2 of the prescribed form). All these parts of the form require to be completed.
7. In the Tribunal’s view, an error in completion “affects the effect” of the notice to leave if, as a result of the error, the notice does not give the tenant that information. In this case, the error clearly “affects the effect” of the notice to leave, because a correct notice would have informed the Respondent of the correct date on or after which an application to the Tribunal could be submitted. That was not done.
8. The notice should, at the very least, correctly inform the tenant of the “why” (the statutory ground) and the “when” of the proceedings that the landlord anticipates raising.

9. To state an earlier date than the date on which, in terms of the Act, the landlord is entitled to raise proceedings is not, in the view of the Tribunal, “an obviously minor error” which could then be dealt with in terms of S 73 of the Act by the Tribunal. It is an error which causes the notice to fail in achieving one of its fundamental purposes.
10. For these reasons, the Tribunal finds that, in terms of section 73, the error of stating “15.5.24” in part 4 of the notice to leave materially affects the effect of the notice and makes it invalid. It is not a “notice to leave” under section 62. Therefore, the document which accompanied the application to the First-tier Tribunal was not, for the purposes of section 52(3), “a copy of a notice to leave”, and accordingly, given section 52(2)(a), the Tribunal cannot entertain the application.
11. The Tribunal considered whether S 52 (4) of the Act could be of assistance to the Applicant. All S 52(4) allows is to consider an application made in breach of S 54 if it considers it is reasonable to do so. However, stating the wrong date in the Notice to Leave is not a breach of S 54 but a breach of S 62 (1) (b), which prescribes the information to be included in the Notice to Leave. Had the Notice to Leave stated the correct date but had the application been made before that date, then the Tribunal could have considered whether it would have been appropriate to consider the application made e.g. due to time pressure because of antisocial behavior. S 54 relates, as the title states, to “Restriction on applying during the notice period” and it is only a non compliance with that which the Tribunal has discretionary power to consider. The breach in this case is not of S 54 but of S 62. The Tribunal has no discretionary power to entertain this application as the date stated in the Notice to Leave had been wrongly stated in terms of that provision. As stated above, the only other power potentially applicable, that in S 73, does not apply in this case.
12. 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 despite the FTT having requested it on three occasions.
13. Finally, the Applicant was asked to provide information evidencing that the financial hardship component of her application was met. Ground 4A of schedule 3 of the 2016 Act suggests the following examples, which had been mentioned to the Applicant by the FTT as documents she may wish to provide: Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a)(ii) includes (for example)—
 - (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.

The Applicant provided none of these documents and no other documents to show that the ground 4A of schedule 3 of the 2016 Act applied, although evidence that the ground applies is a requirement under rule 109.

14. 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.
15. 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.
16. For the avoidance of doubt, this decision does not prevent the Applicant lodging a fresh application once she 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.

P.Hennig-McFatridge

Legal Member

7 August 2024