



Decision with Statement of Reasons of Alan Strain, 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/24/2451

Parties

Mrs Gwen Curtis (Applicant)

Mr Martin Orr (Respondent)

53 Prospecthill Street, Greenock, PA15 4DN (House)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be rejected on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 109 on 29 May 2024.
2. The application was considered by the Tribunal and further information was requested by emails of 30 May and 9 July 2024 as follows:

"We refer to our email of 30 May 2024 and note that we have not received a response. A Legal Member has now considered your application and has asked you to provide the following information before it can be determined if your application can proceed:-

- Please provide a copy of the Notice to Leave given to the tenant. This is a legal requirement under section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal cannot consider an application for an eviction order without a copy of the Notice to Leave. You have provided a copy letter headed “Lease Termination Notice”. However the law requires the Notice to Leave to be in a specific form which you can find in Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) Regulations 2017. You must also produce evidence of service of the Notice to Leave on the tenant, e.g. a covering email or postal delivery slip. If you have not given the tenant the correct Notice to Leave, you may wish to consider withdrawing this application and submitting a further application to the Tribunal once the correct Notice has been served.
- Please provide evidence showing that the eviction ground(s) have been met. You have stated in the application that you are relying upon ground 1, namely the landlord’s intention to sell. Evidence that would support this ground may include (a) a letter of engagement from a solicitor or estate agent concerning the sale of the property, or (b) a home report. You have also referred in section 5 of the application to “Case 1: unpaid and deleted rent payments” and “Case 3: Allowing water to enter property below causing damage on several occasions”. However these do not specify the correct grounds for eviction. If you wish to rely on rent arrears or damage to the property please provide an amended Form E confirming the correct grounds. We would refer you to schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which lists the eviction grounds that you can seek to rely upon.
- Please provide a copy of the section 11 notice served on the local authority together with proof of service on the local authority, e.g. postal slip or covering email.

We appreciate that these matters can be complex, and it may therefore be in your interest to seek advice from a solicitor or advice agency who can assist you. You may wish to consider withdrawing your application meantime, in which case we would ask that you confirm that to the Tribunal in writing. Please reply to this office with the necessary information by 23 July 2024. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received.

Reasons for Decision

3. 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."

4. Rule 109 of the Tribunal Procedure Rules provides:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant (if known); and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction 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; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(iv)a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

(c)be signed and dated by the landlord or a representative of the landlord.

The Applicant has failed to provide necessary information. The Tribunal could not grant the order sought.

5. The Tribunal consider that there is good reason why the application should not be accepted. 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.

A. Strain

26 August 2024

Legal Member/Chair

Date