



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/24/1870

Re: 17 The Green, Bathgate, EH48 4DA ("the Property")

Parties:

Susan McMichael ("the Applicant")

Andrew Thompson ("the Respondent")

Tribunal Member:

H Forbes (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 the application is frivolous in terms of Rule 8(1)(a) of the Procedural Rules, and the Tribunal has good reason to believe 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 23rd April 2024 with associated documents, including a private residential tenancy agreement between the parties which commenced on 25th March 2021. The Applicant initially indicated the eviction order was sought under grounds 1, 1A, 2 and 8A.
2. Following a request for clarification and further documentation, on 30th April 2024 the Applicant lodged a copy of a Form AT6 served upon the Respondent, and clarified the eviction order was sought under grounds 1, 12 and 12A.
3. Further requests for documentation, including a valid Notice to Leave with evidence of service, and evidence to support ground 12, were made to the

Applicant on 1st and 23rd May, 28th June, 30th July and 9th September 2024. The Applicant provided several recorded delivery posting receipts, but no Notice to Leave or evidence to support ground 12 was provided. No response was provided by the Applicant to the requests of 30th July and 9th September 2024.

Decision

4. 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."

5. On consideration of the above test, the Tribunal considers that this application is frivolous, misconceived and has no prospect of success. The Tribunal also determined that the application should be rejected in terms of Rule 8(c) on the basis that there is good reason to believe it would not be appropriate to accept the application.

Reasons for Decision

6. In terms of section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") and Rule 109, an application must be accompanied by a copy of the Notice to Leave. The Notice to Leave must be valid and conform to the requirements of section 62 of the Act, by specifying the date on which the landlord expects to become entitled to make an application for an eviction order to the First-tier Tribunal. No Notice to Leave has been lodged. A form AT6 has been lodged. This is not appropriate for a private residential tenancy.
7. Rule 109 requires that evidence must be lodged to support the ground of eviction. Despite repeated requests, this was not provided.

8. Given that no Notice to Leave or ground 12 evidence was lodged, the application is frivolous and it would not be appropriate to accept the application. The application is 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.

H Forbes

Legal Member/Chair

24th October 2024
Date