



**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/24/4151

Parties

Mr Mario Zambonini (Applicant)

Mr Andrew Joseph (Respondent)

Love Letts Ltd (Applicant's Representative)

34 Michael Terrace, Chaplehall, Airdrie, ML6 8TQ (House)

1. On 6.9.24 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 eviction ground 8 and referred to rent arrears. The only document sent with the application form was a document headed Notice to Leave

dated 1.8.24, which was not made on the Notice to Leave statutory form. It stated “I hereby give you formal notice to leave to premises occupied by you at the address above y the 30th day of August 2024.” It relied on Ground 12 and stated the landlord will be entitled to make an application for an eviction order on the following business day on the ground specified if the tenant does not move out.

2. The FTT wrote to the Applicant on 9.9.24 with the reference number and asked for provision proof of service and a copy of the S 11 notice to the local authority with proof this had been sent. The documents were to be submitted by 16.9.24. On 20.9.24 the Applicant’s representative provided an email showing that the document submitted to the FTT had been sent to the local authority.
3. The Applicant did not provide the information requested.
4. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

- 6. 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. None of the documents stated in rule 109 as documents necessary to be provided with an application have been submitted.
3. The document headed Notice to Leave is not a valid Notice to Leave in terms of s 62 of the Private Housing (Tenancies) (Scotland) Act 2016. A Notice to Leave has to be in the format stated in schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended. It has to provide the information stated in the schedule, in particular where advice can be accessed and what the minimum notice periods are. The document lodged does not meet these requirements and is thus not a Notice to Leave in terms of the legislation as required for the making of a valid application.
4. S 56 of the 2016 Act specifically states "A landlord may not make an application to the First-tier Tribunal for an eviction order against the 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. Notice under subsection (1) is to be given in the manner and form prescribed under section 11 (3) of the Homelessness etc. (Scotland) Act 2003. " The format and content of the S 11 notice is set out in the Notice to Local Authorities (Scotland) Regulations 2008 as amended.
5. As stated above, there are specific requirements to the form and type of information to be provided by the Applicant to the local authority to create a valid S 11 notice as required by S 56 of the 2016 Act. I requires among other matters the landlord details, date the tenancy

started and the landlord registration number. The Applicant only sent a copy of the notice to leave document he had issued to the tenant to the local authority. The Applicant in this case has not provided a notice which meets the specifications of S 56 of the 2016 Act.

6. Furthermore, no rent statement had been lodged and no evidence has been provided that the Applicant had complied with the Pre-action requirements.
7. 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.
8. The application is thus rejected.
9. For the avoidance of doubt, this decision does not prevent the Applicant lodging a fresh application once all the necessary documentation is 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
22 October 2024