



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

Case Reference: FTS/HPC/EV/24/3124

94 Sandy Road, Renfrew ("the Property")

Alexander Joseph McDonald, 4 Stanley Drive, Paisley ("the Applicant")

Beth Galvin, 94 Sandy Road, Renfrew ("the Respondent")

1. The Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant lodged an incomplete Notice to leave with the application. Most of Part 2 is missing, so the eviction ground is not specified. The Notice is dated 22 May 2024. The date specified in Part 4 is 21 June 2024. The Applicant also provided a picture of an envelope with a tracking number. The envelope is date stamped 23 May 2024. In response to requests from further information the Applicant confirmed that the Notice had been sent on 23 May 2024 and provided a track and trace report showing it was delivered on 24 May 2024.
2. A Legal Member of the Tribunal considered the application and the Applicant was notified that the Notice to leave appeared to be invalid, as the date specified in Part 4 is incorrect. She was asked to provide a submission which addressed the legal basis upon which the Notice could be accepted. The Applicant responded, referred to the relevant sections of the 2016 Act, stated that she could not control when Royal Mail delivered the Notice, argued that the notice had been served on 24 May 2024 and that the date in Part 4 was correct. She also stated that application had not been submitted until 4 July 2024. On 13 December 2024, she also submitted a complete Notice to leave with the ground specified in Part 2. However, no explanation was provided for this and the Applicant did not state that the new notice, and not the one lodged with the application, had been served on the Respondent.

DECISION

3. The Legal Member considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

Rejection of application

(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.

4. **After consideration of the application and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.**

Reasons for Decision

5. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The Notice to Leave which accompanies the application is dated 22 May 2024. The documents and information provided the Applicant appear to establish that

it was sent by recorded delivery post on 23 May 2024. Part 4 of the Notice states that “An application will not be submitted to the Tribunal for an eviction order before 21 June 2024. This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the let property)”. The relevant sections of the 2016 Act are as follows:-

52 Applications for eviction orders and consideration of them

...

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) **specifies 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 First-tier Tribunal,**

(c) **states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and**

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

...

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purposes of subsection (4), it is to be assumed that the tenant will receive the Notice to leave 48 hours after it is sent

7. For the purposes of section 62(1)(d), the relevant regulations are the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, schedule 5 of which sets out the prescribed form for a notice to leave. Part 4 of that form is set out as follows:

Part 4 THE END OF THE NOTICE PERIOD

An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that the Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).

8. The Legal Member notes that the date specified in the Notice to leave is 21 June 2024. This date is clearly incorrect. In terms of section 62(4) of the 2016 Act, the Notice must state a date being **“the day falling after the day on which the notice period defined in section 54(2) will expire.”** The 28 day notice period started on 25 May 2024 (48 hours after it was sent) and expired on 22 June 2024. The date in Part 4 should therefore be 23 June 2024.
9. The opening words of Section 62 indicate that a Notice to Leave has to fulfil the four requirements specified in Sections (a) to (d) of that section. It follows that a Notice to Leave which does not fulfil these requirements is not a “Notice to leave” in terms of the 2016 Act. The Notice submitted with the application does not fulfil the requirement specified in Section 62(b), as the Notice wrongly indicates that the Applicant expected to be able to make an application to the Tribunal on 21 June 2024. As a result, the Notice that has been submitted is not a Notice to leave in terms of Section 62. As the application to the Tribunal has to be accompanied by a “Notice to Leave”, the Applicant has failed to comply with Section 52 of the 2016 Act and, as a result, the Tribunal cannot entertain the application.

10. With regard to the Applicant's additional arguments, the Legal Member makes the following observations.

- (a) The reference to the Applicant having no control over the date of delivery is irrelevant. It is the date that the Applicant sent the Notice which is crucial. In any event, there appears to have been no delay on the part of Royal Mail.
- (b) The date of submitting the application is also irrelevant. The validity of the notice cannot be determined by events which occurred after it was served and the defect in the Notice cannot be retrospectively cured.
- (c) The reason for the Notice being posted on 23 May and not the 22 May is also irrelevant. In any event, this would not have resolved the issue as the notice period would still have been a day short had it been posted on the date that it was signed.

11. The application is rejected for the reasons already outlined. However, it should also be pointed out that the Notice to leave is also defective in that it does not specify the eviction ground in Part 2. It is arguable that the information provided in Part 3 may have addressed this omission but as neither the ground number or the actual wording of ground 12 are included the Applicant would have had to persuade the Tribunal that the Notice still complied with Section 62(c).

12. The Legal Member therefore determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

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.

J Bonnar

Josephine Bonnar, Legal Member

16 December 2024