



DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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 Procedure Rules")

Case Reference: FTS/HPC/EV/24/1684

146 Bonnyton Road, Kilmarnock, KA1 2PQ ("the Property")

MZY Ltd ("the Applicant")

Alieesha McCuaig ("the Respondent")

1. The Applicant sought an eviction order in terms of Rule 109 of the Procedure Rules and Section 51(1) of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). Some supporting documentation was lodged with the application, which was lodged with the Tribunal on 15 April 2024. However there were some issues and discrepancies with the application and several requests for clarification/further information have been issued by the Tribunal on 7 May 2024, 4 June 2024, 11 July 2024, 14 August 2024 and 29 October 2024.
2. The Applicant responded to the earlier requests for information but these did not address all outstanding issues in respect of the eviction application. It also appeared from the Applicant's responses that the Respondent had already vacated the property but that the Applicant still wished to pursue the Respondent for rent arrears and the costs of property damage. The Tribunal wrote to the Applicant in detailed terms regarding these issues on 14 August 2024 and requested a response by 14 September 2024, failing which the Applicant was informed that his application may be rejected. No response was received within the time-limit stated. A reminder was issued by the Tribunal on 29 October 2024, requesting a response by 5 November 2024. It again advised of the risk of the application being formally rejected and requested that the Applicant confirm if he wished to withdraw the eviction application. No response was received by the date stated, nor since.

Decision

3. After detailed consideration of the application, and the above, the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.”

Reasons for Decision

4. Rule 5 of the Procedure Rules states that an application “is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in...” the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the “mandatory requirements for lodgement have been met” and “may request further documents”.
5. The Applicant has not lodged an application in accordance with the Procedure Rules in that he has not provided all supporting documentation required nor responded to requests by the Tribunal for further documentation/clarification. The application is incomplete and not currently a valid application. It also appears that the Respondent may already have left the property and that the eviction application may no longer be required. The Applicant has been given several opportunities to clarify the position and/or submit the documentation required but has failed to do so.
6. The Tribunal fully informed the Applicant of the position on 14 August 2024 and that the application was at risk of rejection. A reminder was issued in similar terms on 29 October 2024.
7. The Applicant has failed to comply with Rules 5 and 109 of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. 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.

Nicola Weir, Legal Member
4 December 2024