

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/23/3126

Parties

Walmac Property Ltd (Applicant)

25C Finlow Terrace, Dundee, DD4 9NQ (“the Property”)

Tribunal Member: Ruth O’Hare (Legal Member) with delegated powers from the Chamber President

Decision

The Tribunal rejects the application by the Applicant received by it on 24 June 2024 under Rule 8(1)(a) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

Background

1. The Applicant applied to the Tribunal for an eviction order under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 1 of paragraph 3 of the 2016 Act.
2. The Applicant provided a notice to leave with the application dated 15 September 2023 which had been sent to the tenant by email. The notice to leave stated that an application would not be submitted to the Tribunal any earlier than 12 December 2023.
3. The Tribunal queried the method of service of the notice upon the tenant with the Applicant, on the basis that there was no explicit provision in the tenancy agreement for notices to be sent by email. The Applicant responded to confirm that the notice had also been posted through the letterbox of the property. The Applicant provided a text message from the tenant confirming receipt of the notice to leave by both methods.
4. The Tribunal also asked the Applicant for their comments on whether the application had been made timeously. The Tribunal highlighted the provisions of section 55 of the 2016 Act, which state that a landlord could not make an

application for an eviction order using a notice to leave more than six months after the day on which the relevant period in relation to that notice expired. The Tribunal calculated the relevant period to have expired on 10 June 2024. The application therefore appeared to be out of time. The Applicant responded to advise that they had calculated the notice period from the date the tenant acknowledged the notice to leave, which was 13 October 2023.

Reasons for Decision

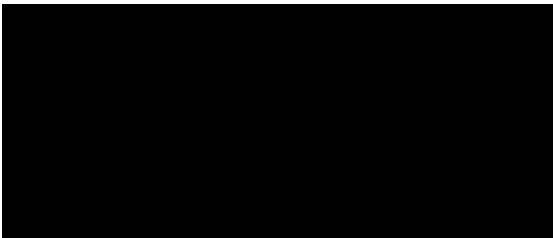
5. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R-v- North West Suffolk (Mildenhall) Magistrates Court (1998) Env.L.R.9*. At page 16 he states:- “What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic”.
6. I consider that this application is frivolous or vexatious and has no reasonable prospect of success in its current form. The notice to leave has fundamental defects and on that basis I do not believe that the Tribunal can competently entertain the application.
7. Section 55 of the 2016 Act provides that “*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 more than six months after the day on which the relative period in relation to that notice expired*”. The relevant period is calculated in accordance with the provisions of sections 54 and 62 of the 2016 Act. In this case, the notice to leave was initially emailed to the tenant on 15 September 2023. The date on which the relative period expired is 10 December 2023, however the date stated in the notice to leave was 12 December 2023. The application was received by the Tribunal on 24 June 2024. The application was therefore received more than six months after the day on which the relative period in relation to that notice expired.
8. The Applicant has stated that they calculated the six month period from the date the tenant acknowledged receipt of the notice on 13 October 2023. That does not, however, align with the requirements of the legislation. The notice to leave must state the day on which the relative period expires, which in this case was the 10 December 2023.
9. The Applicant has also failed to satisfy the Tribunal that the notice to leave has been competently served upon the Respondent. In the absence of any explicit provision in the 2016 Act, the requirements pertaining to service of a notice to leave can be found in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”). Section 26 (2) of the 2010 Act provides that a notice may only be served on a tenant by personal delivery, by being sent by recorded post, or by email where written consent is obtained in advance. There is no explicit written agreement for the notice to be sent to the tenant by email. The Applicant has stated that the notice was also posted through the

letterbox of the property but that does not constitute personal delivery to the tenant.

10. Accordingly, even if the Applicant were able to satisfy the Tribunal that the application has been made timeously, the service of the notice to leave does not comply with the requirements of the legislation. The application is therefore futile and has no prospects of success. Accordingly I can see no option other than to reject the application under Rule 8(1)(a).
11. It is open to the Applicant to make a new application following service of a valid notice to leave. The Tribunal would encourage the Applicant to take independent legal advice going forward to ensure they comply with the statutory requirements for an application under rule 109.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Ruth O'Hare, Legal Member

7 April 2025