

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 8(1)(c) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/24/5343

Re: Property at 8 Moraine Avenue, Glasgow, G15 6EU (“the Property”)

Parties:

Mr Rafael Tudela, 52 Hollybush Road, Glasgow, G52 2RN (“the Applicant”)

Tribunal Members: Ruth O’Hare, Legal Member, with delegated powers from the Chamber President

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that they had good reason to believe that it would not be appropriate to accept the application received by it on 19 November 2024. The Tribunal therefore rejects the application under Rule 8(1)(c) of the Rules.

Background

- 1 This is an application for an eviction order under Rule 109 of the Rules and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
- 2 In terms of Rule 5(2) of the Rules a Legal Member with delegated powers from the Chamber President reviewed the application to assess whether it had been lodged in the required manner. Following said review the Tribunal wrote to the Applicant on 17 December 2024 in the following terms:-

“Before a decision can be made on whether your application can proceed we require you to provide us with the following information:-

- 1. Please provide a rent statement showing a running total of the arrears accruing*
- 2. Please provide a copy of the signed private residential tenancy agreement*
- 3. Please provide a copy of the Notice to Leave, together with evidence of service of same on the tenant*

4. Please provide a copy of the s11 notice as required by s56 of the Private Housing (Tenancies) (Scotland) Act 2016, together with evidence of service of same on the local authority.”

- 3 On 23 December 2024 the Tribunal received an email from the Applicant in response. The Applicant provided a copy of the tenancy agreement, a rent statement, and a copy of the notice to leave together with proof of delivery by email. The Applicant confirmed that he had contacted the local authority regarding the section 11 notice.

- 4 On 30 January 2025 the Tribunal wrote again to the Applicant in the following terms:-

“Your further information has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:

1. The notice to leave appears to have been served on the basis of grounds 3 and 11. You have not given sufficient notice for ground 3, which requires 84 days notice, and you have not provided any evidence to support ground 3. As for ground 11, rent arrears are specifically excluded from ground 11. The application form refers to wishing to sell, which is ground 1. The application form also refers to ground 8A, which does not exist for this type of tenancy. Please consider whether you wish to continue with this application, or whether you wish to withdraw the application and serve a fresh notice to leave clearly stating the correct grounds, and a fresh application in due course with grounds that correspond to those in the notice to leave. You may wish to take suitable advice before serving any further notice.

You should also be aware of the following:

2. Any application in respect of rent arrears requires to be accompanied by a rent statement with columns showing rent due, rent paid and a running total of rent arrears.

3. It is not clear why a second person is named on the Notice to Leave when there is only one tenant.”

- 5 On 3 February 2025 the Tribunal received a response from the Applicant by email. The Applicant advised that he wished to proceed on ground 17 and ground 3. He provided two emails sent to building contractors, and a rent statement in the appropriate format. He advised that the second individual named in the notice to leave was a family member of the tenant.

- 6 On 10 March 2025 the Tribunal wrote again to the Applicant in the following terms:-

“Your email of 3 February 2025 is acknowledged and has been considered by the legal member. It does not address the issues previously raised.

You now seem to be suggesting that you want to use ground 17. The grounds for eviction in respect of private residential tenancies are set out in schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). Ground 17 in that schedule to the 2016 Act has nothing to do with rent arrears. It is a ground for recovery of possession where a property that was previously licensed as a house in multiple occupation has had that license revoked. Please explain why you believe it can be used in this application?

If you wish to pursue eviction based on rent arrears, then you are required to provide evidence that you have served a notice to leave upon the tenant indicating that you wish to use that ground and you will also be required to provide evidence that you have complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Do you have such evidence of a notice being served and of compliance with these pre-action requirements? What steps have been taken in conjunction with the tenant to manage arrears prior to commencing proceedings for repossession on the grounds of rent arrears?

With regard to ground 3 please explain why two emails, which you have sent to two different architects and which have provoked no positive response, indicate that the landlord intends to carry out significantly disruptive works to the property. You have also failed to address the previous query about the required period of notice for this ground.

You were also previously asked to provide evidence of the method of service of the notice to leave upon the tenant. You appear to have sent the notice by email?. The provisions contained in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 allow service of documents and notices by electronic communications only where the person on whom the document is being served has agreed, prior to the document being served, that it may be served in this manner and that it may be sent to an electronic address and in an electronic form specified by the person for the purpose. No email address is specified in the tenancy agreement for the tenant. Please provide a copy of any written agreement containing such terms to enable the tribunal to be satisfied that it was agreed with this joint tenant in advance that service of a notice by email might be made using the email address shown in your proof of service? Alternatively please provide evidence of the posting and receipt of the notices by a legally valid method as set out in that section 2 Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination.

The tribunal would respectfully suggest that you may wish to seek independent legal advice on this matter.

If you fail to respond to this letter then the tribunal may reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Please reply to this office with the necessary information by 24 March 2025.”

- 7 The Tribunal received no response from the Applicant. On 10 April 2025 the Tribunal wrote again to the Applicant in the following terms:-

“It is noted that you have not responded to our request for further information. Please provide the requested information within seven days, or it is likely the application will be rejected.

If you no longer intend to progress the application, it would be very helpful if you would confirm that you wish to withdraw it. Otherwise, it is likely that a rejection decision will be published on our website.

Please reply to this office with the necessary information by 24 April 2025. If we do not hear from you within this time, the President may decide to reject the application.”

- 8 No further response was received from the Applicant.

Reasons for decision

- 9 The Legal Member considered the application in terms of the Rules and determined 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.”
- 10 The basis of the decision is that the Applicant has failed to provide the information requested by the Tribunal. In terms of Rule 5(3) of the Rules, the Chamber President or another member of the Tribunal under the delegated powers of the Chamber President, may request further documents if it is determined that an application has not been lodged in the prescribed manner. The application in its current form does not meet the mandatory requirements for lodgement that apply to an application under Rule 109 of the Rules. The Applicant has been asked for further information on several occasions. He has been warned that a failure to provide the information may result in the application being rejected. The Applicant has therefore been given the opportunity to address the outstanding matters. Accordingly the Legal Member has concluded that the Applicant’s failure to provide the information constitutes good reason to reject the application under Rule 8(1)(c).

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.

Ruth O'Hare,

28 May 2025

Legal Member/Chair

Date
