

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

West Nisbet No 5, Nisbet, Jedburgh, TD8 6TR

Case Reference: FTS/HPC/EV/20/0587

Monteviot Trust ("the applicant")

Miss Naomi Hare ("the respondents")

1. On 19 February 2020 an application dated 18 February 2020 was received from the applicant. The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The following documents were lodged in connection with the application:- Tenancy Agreement, Notice to Leave with proof of service, Arrears Statement, Notice to Local Authority.
2. The Notice to Leave is dated 10 January 2020, was served by Sheriff Officers on 10 January 2020 and states in part 4: "an application will not be submitted to the Tribunal for an eviction order before 12 February 2019."

3. The Ground of eviction referred to in the Notice to Leave and the application is Ground 12 of Schedule 3 of the Act.
4. The documents referred to above 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

In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Act has to be accompanied by:

- i. evidence showing that the eviction 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 as required under section 56 (1) of the 2016 Act

I consider that the requirement in Rule 109 (b) ii is only met if the Notice to Leave is a valid Notice to Leave.

The requirements for a valid Notice to Leave are set out in S62 of the Act. S 62 1 (b) requires the Notice to specify the date 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. The date is to be calculated in accordance with S 62 (4), S 54 and S 62(5) of the Act. These are referred to for their terms.

In terms of S 54 (2) and (3) of the Act, for a Notice to Leave in regard to Ground 12 of Schedule 3 of the Act the notice period is 28 days. In terms of S 62 (4) of the Act, the day to be specified in accordance with S 62 (1) (b) of the Act is the day falling after the day on which the notice period defined in S 54 (2) of the Act will expire and in terms of S 62 (5) of the Act, for the purpose of subsection (4) it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

In this case the Notice was sent on 10 January 2020 and is thus presumed to have been received on 12 January 2020. The correct date to be inserted in part 4 of the Notice to Leave on the basis of that date would be 10 February 2020. The date stated on the Notice

to Leave is 12 February 2019. The date is not a date calculated in accordance with the statutory provisions. Neither the day of the month nor the year are correct.

I did consider whether S 73 (1) of the Act could be applied in this case. This states that an error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document. It is clear from the wording of S 62(5) of the Act that it was intended that a landlord should be able to correctly identify the date to be stated in S 62 (1) (b) of the Act without having to know in advance precisely when in fact the tenant would receive the Notice to Leave, thus creating certainty for both parties of the date when an application to the First-tier Tribunal could be made. This certainty in my view is a fundamental aspect of the Notice to Leave. If both the day of the month and the year are incorrectly stated on the Notice to Leave this creates a fundamental uncertainty of when an application can be made to the Tribunal and goes beyond a typographical error, which may be considered to be covered by S 73 (1) of the Act. I consider that in this case the identification of the date in part 4 of the Notice to Leave is incorrect to an extent that materially affects the effect of the Notice to Leave, namely amongst other matters the certainty as to when the landlord can apply to the First-tier Tribunal. S 73 in my view cannot be used to remedy this.

I consider that the date stated in the Notice to Leave provides insufficient reliable information to the recipient and thus makes the Notice to Leave invalid.

The lodging requirements for an application under Rule 109 are not met. The application was not validly made. The Tribunal cannot entertain the application. The application is rejected.

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.

Petra Hennig-McFatrige
Legal Member
3 March 2020