

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

24 Garven Road, Stevenston KA20 3NX

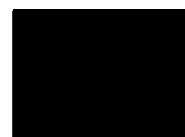
Case Reference: FTS/HPC/EV/19/1202

Alexander Nelson ("the applicant")

Natasha McCourt ("the respondent")

On 17 April 2019 an application was received from the Applicant. The application states it was made under Rule 109 of the Procedural Rules being an application for an eviction order in terms of S 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The following documents were enclosed with the application:-

Letter from R.B Richardson & Co re sale of the property, undated AT6 document with a date of 30 March 2019 entered in part 4, Notice to Quit lacking reference to the property for which the Notice is issued and dated 3 April 2019 for a date of vacating premises on 30 April 2019, S 33 Notice dated 3 April 2019 for a date of 30 April 2019, Letter to North Ayrshire Council undated.



The application did not include a copy of the tenancy agreement, a Notice to Leave in terms of S 62 of the 2016 Act, execution of service of said Notice to Leave, Notice to the Local Authority in terms of S 56 of the Private Housing (Tenancies) (Scotland) Act 2016.

The letter to the Local Authority, which is undated, does not meet the requirements for such a Notice.

The Tribunal on 9 May 2019 wrote to the Applicant requesting the Applicant to lodge the relevant Notice to Leave, copy of the notice to the Local Authority required under S 56 (1) of the 2016 Act, evidence of service of both documents or an explanation why these would not be required and the Applicant was explicitly advised that the application may be rejected if this was not forthcoming by 23 May 2019. He was also advised to consider withdrawing the application and lodging a new application with the correct documentation.

No reply was received by the Tribunal.

DECISION

1. 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."

S 52 of the Private Housing (Tenancies) (Scotland) Act 2016 states: Applications for eviction orders and consideration of them

This section has no associated Explanatory Notes

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(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.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

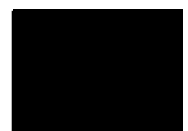
(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.



2. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that the application is frivolous or vexatious and has no prospect of success within the meaning of Rule 8(1)(a) of the Procedural Rules and that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

3. Frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.
4. The Applicant states the application is made under Rule 109. Rule 109 relates specifically to proceedings in terms of S 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The form AT6, S 33 Notice and Notice to Quit documents lodged specifically refer to the Housing (Scotland) Act 1988 and not to the Private Housing (Tenancies) (Scotland) Act 2016.
5. As the Applicant has not submitted a copy of the tenancy agreement in question or provided evidence of the start date of the tenancy it is not possible to ascertain which type of tenancy is in place. However, he states it is a tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. The application thus has to be considered as made under Rule 109.
6. In order to terminate such a tenancy a Notice to Leave in terms of S 62 of the 2016 is required. No such notice was enclosed. None of the documents lodged are a Notice to Leave in terms of the Private Housing (Tenancies) (Scotland) Act 2016 and none of the documents refer to proceedings under the Private Housing (Tenancies) (Scotland) Act



2016.

7. Document AT6 is a document relating to proceedings under S 18 of the Housing (Scotland) Act 1988 and not the 2016 Act. It is also undated and there is no record of service. It refers to a date of 30 March 2019 for raising proceedings under the Housing (Scotland) Act 1988 and not under the 2016 Act.
8. The Notice to Quit which was enclosed specifically refers to ending a tenancy which is an assured or short assured tenancy. It does not refer to a Private Residential Tenancy in terms of the 2016 Act.
9. The S 33 Notice submitted refers specifically to proceedings in terms of S 32 of the Housing (Scotland) Act 1988 and not under the 2016 Act. It refers to Short Assured Tenancies rather than Private Rented Tenancies. It also gives less than two months notice, which is the notice period required in terms of S 33 (2) of the Housing (Scotland) Act 1988 required for Short Assured Tenancies.
10. No proof of service has been provided to show when any of these notices were served on the Respondent.
11. The Tribunal specifically asked the Applicant to lodge further documents as set out above and provide further information as set out above. The Applicant did not do so.
12. He was advised that he may wish to consider withdrawing the application and lodging a fresh application with the correct documentation. He did not do so.
13. The application as it stands has no prospect of success as the Applicant has not provided the necessary documentation for proceedings under the Private Housing (Tenancies) (Scotland) Act 2016 and has not evidenced that the application actually relates to a tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
14. Rule 109 of the Rules of Procedure requires the application to be accompanied by a copy of the Notice to Leave given to the tenant as required under S 52 (3) of the 2016 Act and a copy of the notice given to the Local Authority as required under S 56 (1) of the 2016 Act (Rule 109 (b) (ii) and (iii)). S 52 (3) of the Private Housing (Tenancies) (Scotland) Act 2016 requires the application to be accompanied by a copy of the Notice to Leave. No Notice to Leave document meeting the criteria of S 62 of Private Housing (Tenancies) (Scotland) Act 2016 has been submitted.
15. In terms of Rule 8 (1) (c) it would not be appropriate to receive the application as it does not meet the requirements for an application as stated in terms of S 52 (3) of the Private

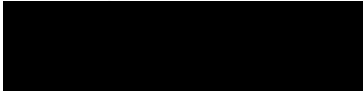


Housing (Tenancies) (Scotland) Act 2016 or the lodging requirements for an application under Rule 109 of the Rules of Procedure.

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 McFatridge
Legal Member
5 June 2019