

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT

Under Rules 5, 8 & 109 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

In connection with

Case Reference: FTS/HPC/EV/19/1466

Mr Stuart Kean ("the Applicant")

Mr Ryan Duffy ("the Respondent")

Background

1. On 14 May 2019, an application was submitted by the Applicant's Representative. The application is made under Rule 109 of the Procedural Rules. The following documents were enclosed with the application: Notice to Leave, Section 11 Notice under the Homelessness etc. (Scotland) Act 2003, rent ledger, copy letter of 19 March 2019 and copy e mails of 22 & 27 March 2019. There was reference to the Private Residential Tenancy and proof of postage having been lodged but these do not appear to be with the papers.
2. No letter of authority was lodged to evidence the authority of the agent to act as the Applicant's Representative.
3. The Notice to Leave produced and the Application relies on the Ground "You have breached a terms(s) of your tenancy eviction ground" and in the agreement, "Breached the terms of the tenancy agreement, PRT".
4. The Notice to Leave produced at Part 3 states, "You have breached the terms of your tenancy agreement as there are arrears on the account of £1155". A copy of the statement of the account showing the rent arrears as being attached in support of the

eviction action is referred to.

Decision

5. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

“Requirements for making an application

5.—(1) 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 rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.”

6. 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.”

7. I considered the application in terms of Rule 109 of the Procedural Rules. That Rule provides:

‘Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord;

(ii) the name, address and profession of any representative of the landlord;

(iii) the name and address of the tenant; and

(iv) the ground or grounds for eviction;

(b) 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; and

(iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c) be signed and dated by the landlord or a representative of the landlord.

8. I considered the application in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the 2016 Act’):

Section 51, First-tier Tribunal’s power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3)The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4)An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

And

Section 52, Applications for eviction orders and consideration of them

(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.

And

SCHEDULE 3 EVICTION GROUNDS- (introduced by section 51)

Breach of tenancy agreement

Ground 11

(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3)The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

9. After consideration of the terms of the application and the various documents produced, I consider that the application should be rejected on the basis that it

would not be appropriate to accept the application under Rule 8 (1) (c).The application should be rejected under Rules 5 & 109 (b) (i).

Reasons for Decision

10. The Tribunal must have regard to the mandatory requirements contained in Procedural Rules 5, 8 & 109.
11. The Notice to Leave produced relies on Ground 11 of Part 3 of Schedule 3 of the 2016 Act. However, Ground 11 makes it clear that the reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent. The Applicant relies on the term that the tenant is required to pay rent and has lodged a rent ledger as evidence of the Ground. However, the wrong Ground is relied upon. Therefore, no evidence had been lodged in support of Ground 11 in fact. As it stands, the Application has no prospect of success.
12. This application must be rejected upon the basis that it would not be appropriate to accept the application under Rule 8(1)(c).
13. This Decision does not preclude the Applicant submitting a fresh application with the required fresh valid documentation.

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.

Ms Susan Christie

Susan Christie
Legal Member
22 May 2019