

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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 Rules")

in connection with

363 Paisley Road West, Flat 2/2, Glasgow, G51 1LX ("the Property")

Case Reference: FTS/HPC/EV/19/1556

MR KAMRAN MUGHAL ("the Applicant")

MR DEAN BERNARD ("the Respondent")

1. The application was made under Rule 109 of the Rules being an application for a Private Residential Tenancy Eviction Order. The application was accompanied by copies of a notice to leave dated 4 April and notice under Section 56 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). A copy of the written tenancy agreement between the parties was also provided as was statements of the rent account. The application specified that the Applicant was seeking an order on Ground 12 of Schedule 3 of the 2016 Act as a result of non-payment of rent.
2. The notice to leave specified 1 May 2019 as the earliest on which Tribunal proceedings could be brought. A request for further information dated 5 June 2019 was sent to the Applicant. This requested evidence of service of the notice to leave and submissions as to whether the appropriate period of notice had been given under the 2016 Act.
3. The Applicant's representative responded on 5 June 2019, confirming that the notice to leave had been sent by email to the Respondent on 4 April 2019. He also advised that he considered adequate notice had been given as proceedings had not been brought until 21 May 2019, to allow the Respondent an opportunity to pay rent that was due to be received through Universal Credit.

Decision

4. The circumstances in which an application is to be rejected are governed by Rule 8 of the Chamber Procedural Rules. That Rule provides:-

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.”

5. **After consideration of the application, the attachments and correspondence from the Applicant’s solicitor, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

Reasons for Decision

6. In this application, the Applicants are relying on the notice to leave dated 4 April 2019. As they are relying on Ground 11 of Schedule 3 of the 2016 Act, the relevant notice period in terms of Section 54 of the 2016 Act is 28 days.

7. Section 52(3) of the 2016 Act states:-

(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

The Applicant confirmed that the notice was emailed to the Respondent on the 4 April 2019. Section 62 of the 2016 Act states:-

(1)References in this Part to a notice to leave are to a notice which—

.....

(b)specifies the day 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,

.....

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) 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 the present case The Applicant confirmed that the notice was emailed to the Respondent on the 4 April 2019. The Respondent would have been assumed to have received the notice on 6 April 2019. Section 54(2) of the 2016 Act states:-

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord,

The first day of the relevant notice period would therefore also be 6 April 2019. Part 4 of the notice to leave specified that an application would not be submitted to the Tribunal before 1 May 2019. This is prior to the expiry of the 28 day notice period. The notice to leave served by the Applicant does not comply with Sections 62(1)(b) and 62(4) of the 2016 Act. Section 62 of the 2016 Act defines a notice to leave. The date to be specified in Part 4 is prescribed by Section 62 of the 2016 Act and is essential to the validity of the notice. The date on which Tribunal proceedings are actually brought is not relevant. The Application cannot, therefore, be said to be accompanied by a notice to leave as is required by Section 52(3) of the 2016 Act.

8. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success given the invalidity of the notice to leave. Accordingly, the present application is rejected on the basis that it is frivolous.

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.

Mr Alastair Houston

Legal Member

11 June 2019