



**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

97 Hogarth Avenue Glasgow G32 6NR

("the property")

Case Reference: FTS/HPC/CV/20/2110

Core Property Management ("the applicant")

Andrea Green ("the respondent")

1. On 6 October 2020 the applicant made an application to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 111 of the Procedural Rules.
2. This was submitted in form of a Form F and appeared to ask for an eviction order rather than a civil order for payment as stated in Rule 111.
3. The following documents were lodged in connection with the application:- Tenancy Agreement, Notice to Leave
4. There was no S 11 notice to the local authority.
5. The application form did not include any form of description of a financial amount sought by the Appellant.

6. The Appellant is stated as Core Property Management.
7. The tenancy agreement submitted is between Kimberley Bolton as landlord and Andrea Green as tenant and refers to a Private Residential Tenancy over the property commencing on 20 March 2020.
8. On 20 October 2020 the applicant was written to by FTT and the following was requested:

“Before a decision can be made, we need you to provide us with the following:

1. You have submitted the application using the wrong form and Rule. Please resubmit

the application using Form E.

2. The owner and landlord appears to be Derek Bolton, not the Applicant. The Landlords name and contact details should be in the Applicant section of the form and Core Management should be in the representative section.

3. You have used the wrong version of the Notice to leave. A new version with new notice periods was introduced on 7 April 2020. Using the wrong form does not make the Notice invalid. However, you cannot rely on the Notice until the correct notice period has passed. You have 3 options –

(a) You can withdraw the application and re-submit it after the correct notice period has passed. This is 6 months for ground 11, breach of tenancy. If you only wish to rely on ground 15, association with a person who has a relevant conviction or has engaged in antisocial behaviour, the notice period is 3 months.

(b) You can withdraw the application and serve a fresh notice before re-submitting the application. On 2 October 2020, the notice period for ground 14 and 15 changed back to 28 days. If you only wish to rely on one or both of these grounds, you only need to give 28 days notice, or

(c) You can continue with the application and ask the Tribunal to allow the application to be entertained, although you have breached section 54 of the Private Housing Tenancies (Scotland) Act 2016, which relates to notice periods. Please note that if you choose this option, a decision about whether to allow this will not be made at this stage, but once the case goes to a case management discussion. You will require to establish it is reasonable for the tribunal to do this.

4. If you wish the application to proceed, please provide the following -

(i) Information about how and when the Notice to leave was given to the Respondent, together with evidence of same

(ii) A copy of the Section 11 Notice sent to the Local Authority, and evidence of how and when it was sent.

(iii) Evidence of the eviction grounds. Please note that the Tribunal cannot accept video evidence, but you can provide photographs, copies of warning letters, statements or emails or texts from neighbours who have complained about the behaviour. If necessary, you can redact these to remove names and addresses if third parties do not want their details known to the Respondent.

Please reply to this office with the necessary information by 3 November 2020. If we do not hear from you within this time, the President may decide to reject the application.”

9. No reply was received.

DECISION

10. 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."

11. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

12. In terms of Rule 111 of the Procedural Rules an application under that Rule would have to be for civil proceedings in relation to a private residential tenancy. The application clearly does not specify any amount of money and is not asking for an order for payment. The application states in 5 b) "Tenancy was served a notice to Leave on 6th August 2020 was due to vacate 7th September 2020 but still remains at the property".
13. It would not be appropriate accept the application under Rule 111 as the application is clearly not for payment but for an eviction order.
14. It would not be appropriate for the Tribunal to accept the application as an application under Rule 111.
15. Even if the Tribunal was to interpret the application as an application under Rule 109 for eviction, in terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 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
16. The documents stated in Rule 109 (b) i. and iii. are missing from the application. It is not possible for the Tribunal to entertain an application unless the lodging requirements for such an application are met. The rule is based on the requirements in the Act.
17. No evidence for any ground stated on the Notice to Leave was lodged.
18. In terms of S 56 (1) of the Act "*a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the property is situated.*"
19. It would not be appropriate for the Tribunal to accept an application that is made other than in accordance with the requirements stated in the Act. The applicant was advised what documentation and information was required. No reply was received by the FTT to the detailed letter requesting further information. No S 11 Notice was provided.
20. Furthermore, as raised in the letter of 20 October 2020 the Applicant had not provided any explanation regarding the discrepancy between the landlord stated on the tenancy

agreement and the applicant, had not provided any evidence of any ground of eviction. For any one of these reasons it would not be appropriate to accept the application.

21. In light of the above I do not intend to address the issues arising from the dates and format of the Notice to Leave attached to the application, which also had been raised in the letter of 20 October 2020 and remained unanswered by the Applicant.
22. The application is rejected because the applicant has not provided the documents which are required for such an application as stated in the 2016 Act and the application does not meet the lodging requirements stated in terms of Rules 109 or 111 of the Procedure Rules. The application has to be 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 McFatridge

Legal Member
24 November 2020