

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

3 Bosewell Drive, Blantyre, G72 0BJ ("the Property")

Case Reference: FTS/HPC/EV/19/2203

MR STEVEN MAGILL ("the Applicant")

MISS NATASHA CONNOR ("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 sought an order on the basis of Grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The application was accompanied by copies of the written tenancy agreement between the parties, a notice to leave and a notice to the local authority under Section 56(1) of the 2016 Act were requested. The application was received by the Tribunal on 16 July 2019.
2. The notice to leave, at part 4, confirmed that an application to the Tribunal for an eviction order would not be made before 1 August 2019. The notice to leave was not dated nor had it been signed. The notice under Section 56(1) of the 2016 Act stated the date of raising proceedings as being 9 July 2019.

Decision

3. The circumstances in which an application is to be rejected are governed by Rule 8 of the Chamber 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."

4. **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

5. In this application, the Applicants are relying on the notice to leave that is neither dated nor signed by the Applicant or a person authorised to sign on their behalf. The notice appears to have been served after the application had been made to the Tribunal. The notice period expires on 1 August 2019.
6. Section 62(1) of the 2016 Act states:-
- (1)References in this Part to a notice to leave are to a notice which—*
 - (a)is in writing,*
 - (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,*
 - (c)states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*
 - (d)fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

Regulations referred to in Section 62(1)(d) include The Private Residential Tenancies (Prescribed Notices and Forms)(Scotland) Regulations 2017 ("the 2017 Regulations"). Regulation 6 of the 2017 Regulations states:-

6. *A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5.*

Schedule 5 contains the blank style form that is to be used. This is the same form that the Applicant has completed in the present case. Part 4, headed "THE END OF THE NOTICE PERIOD", contains a space for signing and dating. As this is part of the prescribed form, it would appear to the Tribunal that a notice to leave must be signed and dated in order for it to comply with the statutory requirements.

7. Furthermore, and in any case, Section 52(2) and (4) of the 2016 Act states:-

(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)).

.....
(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.

Section 54(1) of the 2016 Act states:-

(1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

8. There is clearly a general prohibition on a landlord applying to the Tribunal during the notice period. The notice to leave is an important step in the process advising the tenant how long they have to move out. In the present case, it would appear that the application was made prior to the notice to leave even being given. Even if the lack of a signature and dating of the notice to leave did not render it invalid, it would certainly appear to be deficient and, when considering the importance of the notice with this deficiency, the Tribunal concludes it would not be reasonable to entertain the application.

9. 'Fivolous' 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. 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

30 July 2019