



**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

173A Great Nothern Road, Aberdeen, AB24 2AA (the property)

Case Reference: FTS/HPC/EV/21/2309

Parties

Mr Ramkumar Kandasamy (Applicant)

Mr Nicholas McDonald (Respondent)

1. On 21 September 2021 the applicant lodged an application for an eviction order in terms of Rule 109 of the Procedural Rules with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) .
2. The documents lodged with the application were: copy tenancy agreement, copy of two emails to the tenant of 21 June and 26 June 2021 respectively which only stated that the applicant gives 1 month and 3 months notice respectively but did not state the eviction grounds and did not specify the date as required in terms of S 62 (1) (b) of the Private Housing (Tenancies) (Scotland) Act 2016, copy correspondence regarding complaints from neighbours and various unredacted bank statements.

1. On 21 October 2021 the Tribunal wrote to the applicant and requested amongst other information the following: “1. We note the application you have lodged is not in the style of a Private Residential Tenancy (PRT) but as it started in November 2020 it is a PRT and is governed by the Private Housing (Tenancies) (Scotland) Act and S52(3) of that Act requires that any application for eviction must be accompanied by a Notice to Leave in the prescribed form which has been sent to the Tenant setting out the grounds of eviction you are relying on. The letter to the tenant you have provided is not a Notice to Leave so please provide a copy of the Notice to Leave and evidence of when and how you sent this to the tenant? 2. A Notice to leave sent relying on ground 14 which is anti-social behaviour must give 28 days notice however you also mention relying on more than 3 months rent arrears and this requires 6 months notice to be given. Please confirm if you have given 6 months notice or please advise if you wish to remove that ground from your application? 3. Please also supply a copy of the s11 notice under the terms of the Homelessness etc. Scotland Act 2003 which you require to send to the local authority and please provide evidence of sending it ie by post or e-mail? “
2. On 1 November 2021 the applicant replied: “Thanks for the email. I got few queries. Please see below. Item 1- I was not aware about the Notice to Leave format. Could you please advise how I can obtain or get this this send to the tenant. Item 2 - Yes please remove this in order to give 28 days notice. Item 3 - Also I don't have the S11 notice. Do I need to contact Aberdeenshire council to get this? Do you have any contact details that I can request for the S11? Item 4 - Please attached bank statements and excel sheet explaining the details. Also the consent form from Sara Kandasamy attached.”
3. On 23 November 2021 Tribunal again wrote to the applicant requesting a reply by 7 December 2021: “Application reference EV/21/2309: The Tribunal cannot provide you with legal advice in connection with the application. However, the application cannot proceed unless you submit a copy of a valid Notice to leave which has been served on the Respondent and a copy of a section 11 notice which has been sent to the local authority. You should take advice from a solicitor or housing advisory service. Information can also be found on the Scottish Government website. Please confirm if you wish to withdraw the application until you have complied with these statutory requirements. Please also note that when re-submitting the application, after the relevant notice period on the notice to leave has expired, you must provide evidence of the eviction ground.”
4. No reply was received.
5. The full correspondence and case documents are referred to for their terms and held to be incorporated herein.

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."

2. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.

Relevant Legislation

Application for civil proceedings in relation to a private residential tenancy

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.

REASONS FOR DECISION

1. In terms of Rule 109 (b) (ii) and (iii) the application must be accompanied by a valid Notice to Leave and by the notice given to the local authority as required under section 56 (1) of the 2016 Act.
2. No Notice to Leave as defined in S 62 and required in S 52 (3) of the Private Housing (Tenancies) (Scotland) Act 2016 was lodged with the application.
3. No Notice to the local authority as required by s 56 of the 2016 Act was supplied.
4. The applicant was clearly advised that the application was incomplete and that the application cannot be accepted unless the documentation and information requested is provided. He confirmed that he had not been aware of the need for these documents when he lodged the application and had not completed them.
5. The Tribunal had given the applicant ample opportunity to provide documents and information which would cure these defects. The applicant has not provided the missing documents to date.
6. Given that the application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules and the documents lodged do not confirm that a valid Notice to Leave and valid notice in terms of s 56 (1) of the 2016 Act were issued, it would not be appropriate for the Tribunal to accept the application.
7. The application it is therefore 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

15 December 2021