

DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)

Chamber Ref: FTS/HPC/EV/19/2868

Re: Property at 136 Glasgow Road, Camelon, Falkirk, FK1 4HR (“the Property”)

Parties:

Mr Martin Higgins (“the applicant”)

Miss Deborah Anne Riley and Mr Brian Harley (collectively “the respondents”)

Virgil Crawford (Legal Member)

BACKGROUND

1. On 13 September 2019 an application was received from the applicant under Rule 109 of the Rules, being an application by a private landlord for a Private Residential Tenancy Eviction Order in regard to a Scottish Private Residential Tenancy (“PRT”) under which the applicant had leased to the respondents the property from 24 October 2018 at a monthly rent of £600 per month, payable in advance on the first of each month.
2. Attachments were provided with the application including a copy of the PRT Agreement and a Notice to Leave dated 12 July 2019,
3. The application was considered by the Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

4. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:
 - 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.

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;

...

(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. Rule 109, governing the application, further provides:

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.

6. After consideration of the application and attachments, 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 Rules.

REASONS FOR THE DECISION

7. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, [1997] *EWCA Civ 1575*. He states: "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 this definition that the Legal Member has considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
8. The tenancy agreement states in clear terms, at paragraph 3, headed "Communication", that:-

"....all communications which may or must be made under the Act and in relation to this Agreement, including notices to be served by one party on the other will be made in writing using hard copy by personal delivery or recorded delivery"
9. No proof of service of notices to leave on the Respondents has been produced although the Applicant has clearly stated that it was intimated by e mail. E mail intimation is not in conformity with the terms of the lease as quoted above. In any event no proof of service by e mail has ever been produced either,
10. Separately, despite many requests, the Applicant has consistently failed to provide a copy of a notice served upon the local authority in terms of section 11 of the Homelessness (Scotland) Act 2003 and section 56 of the Private Housing (Tenancies) (Scotland) Act 2016. The only information provided is an e mail dated 17 September which stated that "The eviction notice was sent to" Falkirk Council. Sending a copy of the eviction Notice – which presumably means a copy of the notice to leave – is not equivalent to serving a notice in terms of the 2003 and 2016 Acts,
11. For the foregoing reasons, the Legal Member does not consider there to be any prospect of success of this application and an application based on the Notice to Leave provided is rejected on the basis that the application is frivolous.

RIGHT OF APPEAL

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:-

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Virgil Crawford

29-11-19