

Housing and Property Chamber
First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF SUSAN CHRISTIE, LEGAL MEMBER
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT

Under Rules 5, 8 & 109 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

In connection with

Case Reference: FTS/HPC/EV/19/3749

MacNair Property Limited ("the Applicant")

Benjamin George Baird ("the Respondent")

Background

1. On 22 November 2019, an application was submitted by the Applicant's Representative. The application is made under Rule 109 of the Procedural Rules and relates to a tenancy created under the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act'). The following documents were enclosed with the application: Scottish Private Residential Tenancy Agreement ('PRT') along with a Notice to Leave dated 16 October 2019 and an accompanying e mail, a Rent Statement and a section 11 Notice with accompanying evidence of intimation on the local authority.

Decision

2. I considered the application in terms of Rule 5 of the Procedural Rules. That Rule provides:-

"Requirements for making an application

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) *Where the address of a party is not known to the person making an application under these Rules, the applicant must state this in the application and complete a request for service by advertisement in accordance with paragraph (5).*

(5) *Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.*

(6) *The First-tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.*

(7) *Any relevant notice period begins on the date the advertisement is published in accordance with rule 6A.*

(8) *The First-tier Tribunal must not grant the request where any—*

(a) documents requested under paragraph (3) are not received, or

(b) further steps directed under paragraph (6) are not taken,

within such reasonable period from the date of such request or such direction as the Chamber President considers appropriate.

3. 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.”

4. I considered the application in terms of Rule 109 of the Procedural Rules. That Rule provides:

‘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 (if known); 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*
- (iv) a copy of Form BB(notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable); and*

(c) be signed and dated by the landlord or a representative of the landlord.

5. After consideration of the terms of the application and the various documents produced, I consider that the application should be rejected on the basis that that it would not be appropriate to accept the application under Rule 8 (1) (a) and (c). The application should be rejected under Rules 5 & 109 (a) (i) & (iv) and (b) (i).

Reasons for Decision

6. The Tribunal must have regard to the mandatory requirements contained in Procedural Rules 5, 8 & 109.
7. The application states the Applicant is a limited company, the name as aforesaid. The registered owner of the Property in the Land Register is said limited company. In contrast, the landlord as narrated in the PRT is an individual. The limited company and the individual are separate legal entities.
8. The Ground relied upon is stated in the application as Ground 8. Ground 8 in Schedule 3 of the Act is headed '*Not an employee*'. The brief description for the Ground stated in the application in support of ground 8 is '*At least 3 months in arrears both on the date on which the notice of proceedings was served and at the date of the hearing*'. The '*Rent arrears*' Ground is in fact numbered 12 in Schedule 3 of the Act.
9. The application form itself *must* be accompanied by *evidence showing that the eviction ground or grounds has been met*. The Ground relied on as number 8 is not supported by accompanying evidence. The Applicant is a separate legal entity from the landlord named in the PRT. Accordingly, for those reasons, this application must be rejected upon the basis that that application does not contain the mandatory information needed to satisfy the requirements in Rules 5 & 109 of the Procedural Rules and principally, that it would not be appropriate to accept the application under Rule 8.
10. This Decision does not preclude the Applicant submitting a fresh application.

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.

Susan Christie

Susan Christie
Legal Member
4 December 2019