



**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

7 Sunnyside, Kilmaurs, KA3 2RZ ("the property")

Case Reference: FTS/HPC/EV/20/2342

**Miss Benzie Dsa ("the applicant")
Clarity Simplicity Ltd (applicant's representative)**

Mr David Speirs ("the respondent")

1. The application dated 2 December 2020 was initially lodged unsigned and undated with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) by email from the applicant's representatives on 6 November 2020. With the application on 6 November 2020 Clarity Simplicity Ltd lodged the S 11 Notice to the Council without evidence of service and no other documents.

2. On 19 November 2020 the FTT wrote to the representatives in the following terms:
“The documentation stated to be attached with the application was not attached (apart from the section 11 Notice). Please provide:
 - i. The tenancy agreement;*
 - ii. Copy Notice to Leave;*
 - iii. Proof of service of notice to leave;*
 - iv. Proof of service of section 11 notice;*
 - v. A rent statement detailing rent due, rent paid and rent outstanding.*
2. Please sign and date the application form. “
3. On 3 December 2020 the representatives re-lodged the application with an electronic signature and the date shown as 2 December 2020. They also provided the requested documents.
4. These disclosed that the Notice to Leave had been served on 3 March 2020 by Sheriff Officers and stated as the date when proceedings could be raised with the FTT 27 May 2020.
5. On 15 December 2020 the FTT wrote again to the representatives asking for representations regarding the grounds under which the application is made and the issue of the expiry of the Notice to Leave in terms of S55 of the Act.
6. In the reply received by the FTT the representatives clarify that the ground relied on for the application is ground 12 only, that the Notice to Leave was sent with the notice period being calculated on the longer notice period of 84 days at the time due to the Notice quoting grounds 1 and 12. They clarify the applicant no longer wishes to rely on ground 1 but this should not lead to the notice period subsequently being considered to be 28 days as it would have been 84 days for ground 1 in terms of S54 (2) of the Act.
7. Furthermore, as the FTT did not accept new applications between 25 March 2020 and 9 July 2020, a period they calculate as 106 days, the application should be considered to be made in time as it was only 36 days late if one applied the notice period for ground 12.
8. All correspondence and the information published on the FTT website regarding the impact of the Covid-19 pandemic are referred to for their terms and held to be incorporated herein brevitatis causa.

DECISION

9. 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."

10. 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

Relevant provisions:

In terms of Rule 109 of the Procedural Rules an 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 of 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.

In terms of Rule 5 (3) of the Procedural Rules “(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.”

S 52 of the Act: Applications for eviction orders and consideration of them

... (3)An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

S 55 of the Act Restriction on applying 6 months after the notice period expires

(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 more than six months after the day on which the relevant period in relation to that notice expired.

(2)In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3)The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

S 54 of the Act Restriction on applying during the notice period

(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.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the tenant is not occupying the let property as the tenant's home,

(ii) that the tenant has failed to comply with an obligation under the tenancy,

(iii) that the tenant has been in rent arrears for three or more consecutive months,

(iv) that the tenant has a relevant conviction,

(v) that the tenant has engaged in relevant anti-social behaviour,

(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

Reasons:

11. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S55 an application may not be made using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice has expired. In terms of Rule 5 (3) of the Procedural Rules the application is held to be made on the date that the FTT receives the last of any outstanding documents.

12. In this case the signed and dated application together with the necessary Notice to Leave and evidence of the ground or grounds being met, as required by Rule 109 set out above, were not received by the FTT until 3 December 2020. This is the date on which the

application is deemed to be made.

13. The Notice to Leave relied on grounds 1 and 12 and was served on 3 March 2020 and thus prior to the Coronavirus (Scotland) Act 2000 coming into force. The relevant date in terms of S 54 (2) (a) is thus 3 March 2020. At that time the notice periods for the grounds stated in the Notice to Leave were 28 days for ground 12 and 84 days for ground 1, all in terms of S 54 (2) (b) of the Act. Thus the notice would expire on 31 March 2020 for ground 12 and on 26 May 2020 for ground 1.
14. Regardless of whether one applies the notice period solely for ground 12 or the longer period for ground 1, the application was made more than 6 months after the expiry of the notice period. If one considers the relevant period to be 6 months from 31 March 2020 the application would have had to have been made by 30 September 2020, if one considers the relevant date to be 26 May 2020 the application would have had to have been made by 26 November 2020. It was made on 3 December 2020 as this was the day the application was complete.
15. The application must be rejected because it was made outwith the period stated in S 55 of the Act even if one applied the longer notice period for ground 1.
16. The applicant's representatives stated that the period for lodging an application should be extended because the FTT had not accepted applications between 25 March 2020 and 9 July 2020. It is accepted by the applicant's representatives that it was possible to make applications after the date of 9 July 2020.
17. I do not consider that the application period can be extended in the circumstances described by the applicant's representatives.
18. It is not correct that applications could not be made after 25 March 2020. The guidance on the FTT website issued on 27 March 2020 states:

The Glasgow Tribunal Centre (as the HPC administrative base) will be closed to administration staff from 25th March 2020; there will be limited staff that will be able to action any urgent or time critical applications remotely. These will be processed through the sift stage to the point of notification of acceptance of the application (to the stage of Rule 9 in the HPC Procedural Rules - these rules are available on the HPC website) in readiness for fixing a case management discussion (CMD) or hearing.

We would encourage applicants to submit any urgent and legislative time critical applications electronically and for parties to provide electronic contact details. Electronic submission of an application establishes the date of receipt of the application by the Tribunal and is not reliant on the postal service. It also reduces the possibility of cross-contamination. If for any reason you are unable to submit an electronic application, please contact HPCADMIN@scotcourtribunals.gov.uk who will be able to give you further guidance.

Non-time critical and non-urgent applications may not be processed until the Glasgow Tribunal Centre has re-opened to SCTS administration, unless a case is made that they are urgent and time critical.

*We would remind applicants of the following important information –
If the application is not lodged in the prescribed manner, it is held to be made on the date that the Tribunal receives the last of any outstanding documents necessary to meet the required manner of lodgment (Rule 5(3) HPC Procedure Rules).*

The Tribunal receives a significant volume of applications which do not meet the prescribed manner of lodgment by not providing within the application required information or not submitting prescribed attachments. This impacts on the date when the application is deemed to be made. We would ask applicants to check the written guidance for making an application on the HPC website to ensure that applications when initially sent to the FTT meet the necessary requirements.

We thank you for your patience and understanding at this time.

27 March 2020

19. This clearly states that applications can be made but that there may be a delay in processing said applications due to the closure of the Tribunal Centre. However, it specifically makes reference to the application of Rule 5 (3) of the Procedural Rules. The application could have been lodged even during the period when the Tribunal Centre was closed to the public. The advice given by FTT was to lodge the application in electronic form, which is the form the application was ultimately submitted, to ensure that the date and time of the receipt of the application would be on record. It is simply not correct that the FTT had issued information that applications could not be lodged.
20. Further information was published on the website. The only relevance of the date of 9 July 2020 was that the website update of 26 June 2020 confirmed that *“The rescheduled CMDs will commence from 9th July onwards by teleconference to allow the parties, representatives of parties, the tribunal judge and the tribunal clerk to participate remotely. Those parties affected will be contacted with an update of the position and this article provides information to the wider public.”* At no point did the information on the website state that applications could not be made until 9 July 2020.
21. Furthermore, even in terms of the applicant’s representatives own pleadings it was accepted by the applicant’s representatives that applications could have been lodged after 9 July 2020, which would have given ample time for the application to be lodged in time even if the applicant’s representatives had mis-read the information provided by the FTT on the website.
22. In terms of the information provided by the FTT and the lodging requirements for the application it is clear that the application was lodged using a Notice to Leave later than 6

months of the after the date day on which the relevant period in relation to that notice expired, contrary to S 55 of the Act.

23. It would not be appropriate for the Tribunal to accept an application based on a notice to leave which had expired in terms of S 55 (1) of the Act. The application is thus 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

Petra Hennig McFatridge
Legal Member
13 January 2021