



**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/CV/20/1398**

## **Parties**

**Mr Alan Strang (Applicant)**

**Mr Maciej Leszczak (Respondent)**

**Belvoir Edinburgh (Applicant's Representative)**

**Re: 110/5 Nicolson Street, Edinburgh, EH8 9EJ ("the Property")**

**Tribunal Member:**

**Alan Strain (Legal Member)**

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should not be accepted in accordance with Rule 5 (4) of the Procedural Rules.**

## **Background**

1. The application was received by the Tribunal under Rule 70 on 23 June 2020. The Applicant seeks a civil order for payment in respect of rent arrears and also an eviction order. The following documents were enclosed with the application:
  - (i) A signed Short Assured Tenancy (**SAT**) Agreement in respect of the Property dated 18 January 2018;
  - (ii) Notice to Quit dated 10 March 2020;
  - (iii) AT5 dated 15 December 2017; and
  - (iv) Rent Statement as at 18 May 2020.

2. On 7 July 2020 the Application was considered by the Tribunal and a request for further information issued. The Applicant's agents were requested to provide inter alia the following:

- (i) Your application form states that it proceeds under Rule 70 of the Tribunal's procedure rules, which relates to applications for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988. We note that you have provided a short assured tenancy agreement with your application. However, that agreement is dated 15<sup>th</sup> December 2017 and 15<sup>th</sup> January 2018, with a date of entry of 18<sup>h</sup> January 2018.

With effect from 1<sup>st</sup> December 2017, it was not possible to create a new short assured tenancy agreement unless it was a renewal on substantially the same terms, in relation to the same property, and between the same parties as an immediately preceding short assured tenancy.

Could you please confirm if the agreement was such a renewal, and if so, please provide a copy of the preceding agreement.

If it was not, then please confirm if it is your position that the purported agreement is sufficient to be deemed a private residential tenancy agreement in terms of the Private Housing (Tenancies)(Scotland) Act 2016, and if so, that you wish to amend your application to be brought under Rule 111 of the Tribunal's procedure rules.

- (ii) Your application also states that it seeks an eviction order. An application for eviction or removal of a tenant requires to be made in a separate application brought in terms of Rule 109 in relation to a private residential tenancy agreement, or in terms of Rule 65 or 66 in relation to an assured or short assured tenancy agreement. If you wish to bring such an application, you require to do so in a separate application to the Tribunal. The Tribunal would draw your attention to various alterations to the eviction process made in terms of the Coronavirus (Scotland) Act 2020 in that regard.

The Applicant's agents were requested to provide the information by 21 July 2020 failing which the application may not be accepted.

3. No response was received in that time frame.

### **Reasons for Decision**

4. The Tribunal considered the application in terms of Rule 5 of the Chamber 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) 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.”*

5. An application under Rule 70 requires specified documentation to be lodged with it:

#### **Application for civil proceedings in relation to an assured tenancy under the 1988 Act**

70. Where a person makes any other application to the First-tier Tribunal by virtue of section 16 (First-tier Tribunal's jurisdiction in relation regulated and assured tenancies etc.) of the 2014 Act, the application must—

(a)state—

- (i)the name and address of the person;
- (ii)the name and address of any other party; and
- (iii)the reason for making the application;

(b)be accompanied by—

- (i)evidence to support the application; and
- (ii)a copy of any relevant document; and

(c)be signed and dated by the person.

6. In this Application the Applicant and the Applicant's agents have been requested to provide information and documentation necessary for acceptance of the application. They were given a reasonable period of time to do so and have not done so. In accordance with Rule 5(4) of the Tribunal Procedure Rules the Tribunal considers that the Application should not be accepted.

#### **Right of Appeal**

**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.**

**Alan Strain**

19 August 2020

\_\_\_\_\_  
**Legal Member/Chair**

\_\_\_\_\_  
**Date**