

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF SHIRLEY EVANS, 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 Rules")

in connection with

12 St Giles Place, Dundee, DD3 9JB
Case Reference: FTS/HPC/EV/19/2303

JULIE MITCHELL ("the Applicant")

TERI-LOUISE SAMSON ("the Respondents")

1. On 23 July 2019 an application was received from the applicant via her agent. The application was made under Rule 109 of the Rules being an application by a private landlord for possession of rented property let under a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"). Attachments were provided with the application form to support the application including a notice to leave, a copy of the tenancy agreement together, Landlord authorization letter, a letter dated 23 July 2019 from W&AS Bruce Solicitors and a Notice under Section 11 of the Homelessness (Scotland) Act 2003.

DECISION

2. The Legal Member considered the application in terms of Rule 8 of the Chamber 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."

- 3. After consideration of the application and the attachments the Legal Member considers that the application should be rejected on the basis that there is good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Rules.**

Reasons for Decision

4. The tenancy agreement is a Private Residential Tenancy Agreement ("the tenancy agreement") in terms of Section 1 of the 2016 Act. The Application stated that the Ground of repossession that the applicant relied on was Ground 1 of Part 1 of Schedule 3 of the 2016 Act, namely that the applicant intended to sell the property.

5. Ground 1 of Part 1 of Schedule 3 of the 2016 Act states -

"(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

(a) is entitled to sell the let property, and

b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph

(2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."

6. In terms of Section 50(1)(a) of the 2016 Act a Private Residential Tenancy can only be

brought to an end after the service on the tenant of a notice to leave from the Landlord.

7. In terms of Clause 4 of the tenancy agreement, parties had agreed that notices could be served on the other party using the email addresses set out in Clauses 1, 2 and 3. The Respondent had specified an email address in terms of Clause 1 for this purpose.
8. Paragraph 6 of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 provides "*A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5*" The prescribed notice to leave is found in Schedule 5.
9. On 25 July 2019 the Tribunal wrote to the applicant's agents requesting that the Application be signed and requesting a full copy of the notice to leave as the one submitted with the Application was incomplete. In terms of Section 52(3) of the 2016 Act an application for an eviction order must be accompanied by a notice to leave which has been given to the tenant.
10. On 25 July 2019 the applicant's agent returned the application form duly signed and scanned a copy of the notice to leave to the Tribunal.
11. On 9 August 2019 the Tribunal wrote to the applicant's agent to request proof of service that the Section 11 Notice had been served on Dundee City Council, proof of service of the notice to leave on the tenant and further evidence regarding the applicant's intention to sell the property other than the letter lodged from W&AS Bruce.
12. On 12 August 2019 the applicant's agent emailed to advise that the Section 11 Notice had been served on Dundee City Council, that the notice to leave had been served on the tenant by email and that they were unable to find any other evidence beyond the solicitor's letter as the property could not be advertised until vacated.
13. On 28 August 2019 the Tribunal wrote to the applicant's agent to advise that the notice to leave did not appear to be in the prescribed format and asking for clarification as to how the Tribunal could proceed. The Tribunal also requested a copy of the email to the tenant showing the date the notice to leave was sent to the Respondent and the email address to which it was sent and requested evidence that the Section 11 Notice had been served on Dundee City Council.
14. The Tribunal requested that the applicant's agent reply by 11 September 2019. The agent has not responded to the Tribunal.
15. The applicant has provided no proof to the Tribunal that the notice to leave has been served

on the Respondent. The Respondent gave an email address for the purposes of service of notices in Clause 1 of the tenancy agreement. Despite a copy of the email serving the notice to leave being requested by the Tribunal on two occasions, the applicant's agent has not provided a copy of any email. There is therefore no proof before the Tribunal that the notice to leave has been given to the tenant in terms of Section 50(1) of the 2016 Act.

16. The notice to leave does not follow the prescribed form. In particular the list of eviction grounds listed in Part 2 of the prescribed notice to leave in Schedule 5 of the 2016 Act is missing and therefore does not comply with Paragraph 6 of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Whilst arguably the notice to leave does show the Ground upon which the Landlord wants to proceed, namely that the landlord wants to sell the property, the Tribunal noted that in Part 3, the applicant had not given any reasons as required in the prescribed form which states that a landlord has to give particulars of how the ground has arisen. The instruction is clear to the Landlord that as much detail as possible is required. The notice states that it is important that the tenant fully understands why the landlord is seeking to evict and that the action is justified. In this case the applicant had provided no information at all. The notice to leave was incomplete in that regard and failed to set out the reasons for seeking eviction.

17. For the reasons set out above, the Legal Member considers that the applicant has failed to satisfy the Tribunal that she has complied with the statutory requirement to serve a notice to leave in terms of Section 50(1) of the 2016 Act. The Tribunal has requested proof of service on two occasions and none has been provided. Further the notice to leave does not follow the prescribed form in Schedule 5 of the 2016 Act and is incomplete. In the circumstances, it appears to the Legal Member that the application must fall to be rejected as it is not appropriate for the application to proceed in terms of Rule 8(1)(c) The Application 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.

Shirley Evans
Legal Member
1st October 2019