



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/19/3232

Re: Property at 16 Cove Close, Aberdeen, AB12 3QN (“the Property”)

Parties:

**Mr Ian Clarke and Mrs Abigail Clarke (“the Applicants”)
Michael Clark (“the Respondent”)**

Shirley Evans (Legal Member)

BACKGROUND

1. On 9 October 2019 an application was received from the Applicants via their Letting agents 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 7 January 2019 at a monthly rent of £700 per month.
2. Attachments were provided with the application including a copy of the PRT Agreement, a Notice to Leave dated 4 September 2019 based on Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and a Notice under Section 11 of the Homelessness (Scotland) Act 2003 to Aberdeen City Council.
3. On 25 October 2019 the Tribunal wrote to the Applicants’ letting agent to lodge evidence showing how the proposed eviction ground had been met as the papers as lodged only referred to a breach of Section 42 of the PRT but provided no further detail.
4. On 29 October 2019 the letting agent responded with an email that stated the tenant had *“not made a full and true disclosure in connection with the granting of the tenancy, which may have affected the Landlord’s decision to grant the tenancy”*. They also provided the tenant’s application form that included a signed declaration dated 3 January 2019 that all information provided was true. They

also provided a press article which they stated related to the Respondent's alleged past criminal activity in 2015. They further went on to explain that Police Scotland had searched the Property at the end of June 2019.

5. The Tribunal again wrote to the Applicants' letting agent to set out exactly the information that was given on the application form which was said to be false. The Tribunal also asked for evidence to confirm that the press article related to the Respondent. They were asked to provide that information by 25 November 2019. No response has been received by the Tribunal to that letter.
6. 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

7. 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.

8. 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.

9. 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

10. "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.

11. The requirement to serve a Notice to Leave upon the tenant in a PRT arises from section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. The notice is in statutory form in terms of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Regulation 6 of the

2017 states that “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 statutory form at schedule 5 provides a pro-forma which includes guidance notes regarding completion of the style. The guidance notes and the form thus both form part of the statutory style.

12. The Applicants’ letting agent has used the Notice to Leave style although has omitted certain information as prescribed and its completion does not follow the guidance notes. Part 2 of the Notice to Leave style reads:

Part 2 – EVICTION GROUND(S) BEING USED

[I/We] your [Landlord(s)/Landlord’s Agent*]:*

...

inform you that if you choose not to leave the Let Property on the date shown in Part 4 of this notice, I/we intend to apply to the Tribunal for an eviction order in respect of the Let Property on the following ground(s) which is a ground(s) for eviction as set out in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016*

There then follows the various grounds in that schedule to the 2016 Act with checkboxes so the landlord or landlord’s agent can indicate the grounds for eviction. At this point the Letting agents have ticked the box that relates to Ground 11, being a breach of the terms of the tenancy agreement.

13. Part 3 of the Notice to Leave style reads:

Part 3 - DETAILS AND EVIDENCE OF EVICTION GROUND(S)

[I/We] also inform you that [I/we*] are seeking eviction under the above ground(s) for the*

following reasons:

[State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up.]”

This is followed by several blank lines for the landlord or landlord’s agent to complete with the particulars. The form thereafter continues:

It is important that the Tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that.

[I/We] attach the following evidence to support the eviction action:*

This is then followed by a further number of blank lines for inclusion of any evidence.

14. In the Notice of Leave lodged with the application at Part 3, the Applicants' Letting Agent has omitted to include the guidance which states –
- "[State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up.]"*
15. As far as the completion of the first part of Part 3 of the Notice to Leave is concerned the Letting Agents have stated one sentence: *"You have breached your signed Tenancy Agreement."* That essentially repeats the ground of eviction, namely Ground 11, which ground had been ticked in Part 2. However, there is no reference to how the Respondent has breached the terms of the tenancy agreement and it does not state any particulars as to how the Applicants believe the grounds have arisen as required. On the basis of the information received in the email of 29 October 2019 the Notice to Leave does not state that that breach may relate to a failure by the Respondent to disclose something on the application form or that the breach relates to alleged criminal activities 4 years ago by someone with the same name as the Respondent. The Tribunal noted the application form did not in any event ask for details of criminal convictions.
16. At the second part of Part 3 where it is clear that it is important the tenant fully understands why the Applicants are seeking to evict, they have not provided or referred to any evidence to support that he has breached the terms of his tenancy agreement. Whilst they refer to Section 42 of the tenancy agreement there is no specification as to how that clause has been breached by the tenant.
17. Eviction from a PRT in terms of Ground 11 requires there to be a breach of the tenancy agreement. Implicitly, the purpose of the Notice to Leave is not simply to initiate eviction and provide the tenant with fair notice of the threat to evict, but to provide the tenant with fair notice of the steps necessary to avoid eviction through making payment of the arrears. The statutory guidance notes clearly echo this by stating that:

"[State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up.]" and

"It is important that the Tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that."

[I/We] attach the following evidence to support the eviction action:"*

Such requirements further reflect the statutory provisions, and case law, in regard to previous forms of Scottish residential tenancies, such as the level of detail of a Form AT6 for assured tenancies under section 19 of the Housing (Scotland) Act 1988.

18. I am thus satisfied that the Notice to Leave is deficient in that it fails to provide any detail as to the reasons behind eviction for Ground 11. It also fails to meet the statutory style and is insufficient as a basis for an application for eviction in terms of Rule 109 of the Rules. There is no power of the Tribunal to dispense with requirement for a valid Notice to Leave.
19. 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.

Shirley Evans

Legal Member Chair

10 December 2019.

Date