



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules').

In respect of application by Purple Dot Property Management Ltd SC 637734, 1 Ayton Park South, East Kilbride, G74 3AT (the Applicant) in terms of Rule 109 of the Rules.

Mrs Shona Allan and Mr Lucas Allan, sometime residing at 88 Old Coach Road, East Kilbride, G74 4AU

Case reference FTS/HPC/EV/20/1528

Address of Property: 88 Old Coach Road, East Kilbride, G74 4AU (the "Property").

At Glasgow on the 4 February 2020, Martin Joseph McAllister, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1) (c) of the Rules.

Background

1. This is an application by the Applicant in respect of an order for eviction of the Respondents from the Property in terms of Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016
2. The application was accompanied by *inter alia* a copy of a Notice to Leave which had been served on the Respondents and which was dated 17th June 2020.
3. The grounds for possession contained within the application were Grounds number 8, 13 and 14.
4. The Notice to Leave stated the ground to be that the Respondents have breached a term(s) of their tenancy agreement and states that the notice period before an application can be submitted to the Tribunal is six months.

Reasons for Decision

The Tribunal considered Rule 8 of the Rules:

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.

The Tribunal considered Schedule 1 of the Coronavirus (Scotland) Act 2020

Private residential tenancies: extension of notice periods

2 (1) The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2) Section 54 (restriction on applying during the notice period) has effect as if for subsections (2) and (3) there were substituted—

“(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) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home.

(3A) This subsection applies if—

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

(i) that the landlord intends to live in the let property,

(ii) that a member of the landlord's family intends to live in the let property,

(iii) that the tenant has a relevant conviction,

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

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

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).”

(3) Section 64 (six month periods) has effect as if for it there were substituted—

“64Three or six month periods

(1) A reference in this Part to a period of three or, as the case may be, six months (however expressed) is to a period which ends in the month which falls three or, as the case may be, six months after the month in which it began, either—

(a) on the same day of the month as it began, or

(b) if the month in which the period ends has no such day, on the final day of that month.

(2) Subsection (1) does not apply in relation to the references to six months in section 59.”

1. The grounds referred to in the application appear to refer to those contained in the Housing (Scotland) Act 1988 rather than the Private Housing (Tenancies) (Scotland) Act 2016.
2. The ground on which the Applicant is seeking an order of eviction is not one referred to in part 3 or part 3A of Schedule 1 of the 2020 Act.
3. The ground on which the Applicant is seeking an order of eviction is that the Respondents have breached a term of their tenancy agreement and the notice period before an application can be made to the Tribunal is six months.
4. In considering the terms of the Coronavirus Act 2020, the application is premature and is rejected under Rule 8 (1) (c) of the Rules because it is not appropriate to accept an application made before a date six months from the date of the Notice to Leave.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Martin J. McAllister

Legal Member

6th August 2020