Decision on Application for Review with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Chamber Ref: FTS/HPC/EV/19/1276

Re: Property at 43 School Road, Coalburn, ML11 0LP ("the Property")

Parties:

Jackie Campbell, 28 Turfholm, Lesmahagow, ML11 0ED ("the Applicant")

Connor Murray, 43 School Road, Coalburn, ML11 0LP ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant's Application for Review being wholly without merit, it should be refused.

Statement of Reasons

1. The application is under Rule 109, being an application for an eviction order for a Private Residential Tenancy.

2. The application was considered at 'sift' by a different Legal Member acting as In-House Convenor and was refused on 14 June 2019 for the reasons stated below. It was not practical to have that same Legal Member consider the review due to the scheduling of Legal Members in-house. Notwithstanding the terms of Rule 39(6), I conducted this review when also sitting as In-House Convenor on a different date.

3. The application relies on Grounds 11 (breach of a term of the lease) and Ground 12 (rent arrears). On 14 May 2019, after an initial review of the application and supporting papers by a Legal Member, the Applicant was asked: to confirm whether Ground 12 was insisted upon as that ground was

unmentioned in the Notice to Leave relied upon; and to provide evidence in support of any grounds relied upon. The Applicant was provided until 28 May 2019 to provide the information. When the information was not received by the Tribunal, a Legal Member refused the application. It was against that decision that the Applicant sought review.

4. In support of the request for review, the Applicant's agent has provided evidence of an email sent to the Tribunal on 28 May 2019 with multiple sizable attachments. I reviewed the contents of this email and its attachments on 20 June 2019. The Tribunal has confirmed with its IT department that the email was "bounced" due to its size (27MB, where the Tribunal's system has a limit of 21MB). The Tribunal's IT department has confirmed that an automated email stating that the email was bounced was issued to the Applicant's agent at the time. The Applicant's agent states that she did not receive such an email (though this does rule out that it may have been filtered by the Applicant's agent's own system into a "spam" folder or similar).

5. The essence of the Applicant's application in regard to Ground 11 was that the Respondent had refused (seemingly on a single occasion) access to the Property for repairs to be carried out. The nature of the repairs was unmentioned in the Notice to Leave or the application.

6. The email and attachments of 28 May 2019, now resent in a different format and received by the Tribunal, appear mostly irrelevant. None address the application's reliance on Ground 12 (rent arrears), which is not mentioned in the Notice to Leave. The only apparently relevant new evidence addressing the information request of 14 May 2019 is in regard to matters under Ground 11. The email attachments included a short email from "Sandy" of "Handy Sandy Services". He is said to be the Applicant's contractor. The contractor explained in his email that a visit to the Property to "remove old tiles and fit new wetwall boards" was arranged with the Respondent for 09:00 on 11 March 2019 but did not take place. The email describes a confrontational visit by the Respondent to the Applicant's agent's office on the morning of 11 March, followed by a further confrontational discussion with the contractor. The dispute on that day appears to have been about the extent of the repairs to be carried out versus those that the Respondent saw as necessary, though the contractor's email is not very detailed. No reference is made in the contractor's email, or elsewhere in the attachments, as to any urgency for the repairs scheduled for 11 March 2019, or whether any attempt was made to reschedule repairs for another time.

7. Further the correspondence of 28 May 2019 clearly states that vacant possession of the Property was obtained on 23 May 2019, though there remain complaints about the condition of the Property and arrears. (These would be issues for a separate Rule 111 application however.)

8. Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") provides as follows:

39.-Review of a decision

(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must-

(a) be made in writing and copied to the other parties;

(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal. ...

(5) In accordance with r ule1 e, the decision may be reviewed without a hearing.

(6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates. ...

(8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016 for making an application for permission to appeal.

9. When exercising any power under the Rules or interpreting any rule, I am required by Rule 3 to have regard to the "overriding objective", which is set out at Rule 2 as follows:

2.-The overriding objective

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes-

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;

(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;

(d) using the special expertise of the First-tier Tribunal effectively; and

(e) avoiding delay, so far as compatible with the proper consideration of the issues.

10. I am satisfied that the Applicant's application was made in writing within 14 days of the date when the decision was made and sets out why the Applicant considers that a review of the decision is necessary. As the application was refused at 'sift' I did not see any need to intimate a copy of the Review to the Respondent nor seek any further submissions before considering the Review without a hearing.

11. In all the circumstances, I am satisfied that the application for review is entirely without merit when consideration is made of the overriding objective. It is the responsibility of an applicant or its agent to ensure that documentation reaches the Tribunal in time. It is a matter of common knowledge in the modern office that emails with large attachments may "bounce" due to the recipient's system not accepting excessively large emails. The Applicant's agent chose to send a time-critical email of 27MB (which is very sizable) without seeking any confirmation from the Tribunal that it has been received. There is no good reason why the Applicant cannot submit a fresh action containing all necessary detail and supporting documents. It is not an appropriate use of the review procedure to cure such a careless administrative step in the circumstances, and cause further delay and undue procedure in this application.

12. Furthermore, had the email of 28 May 2019 been received on that date, at most it would have resulted in the application being refused in regard to Ground 12 (which is still unsupported). The application may have then proceeded in regard to a Ground 11 eviction (but see below). The application under Ground 11 would rely on an apparently minor breach of the tenancy for which the Applicant has sought no remediation other than eviction. In consideration of the overriding objective, review would not be appropriate to resurrect such an application.

13. Finally, on the face of the papers, the dispute is now resolved as vacant possession has been obtained. Had the email of 28 May 2019 been received on that date, it is likely that the Legal Member considering the application would have sought a further information request to seek submissions on why the application should not in fact be refused on the basis of Rule 8(1)(b): "the dispute to which the application relates has been resolved". Again, review would not be appropriate to resurrect such an application simply then to consider a material fresh issue.

Decision

14. For all the above reasons and in all the circumstances, I refuse the Applicant's application for review under Rule 39(3) as being wholly without merit.

Mr Joel Conn

Legal Member/Chair _____ 26 June 2019 **Date**