



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

1F Bogwood Road, Dalkeith, EH22 5AD (the property)

Case reference FTS/HPC/EV/22/0134

Parties

Mr Grant Henderson (Applicant)

Miss Nadine Bentley (Respondent)

Rent Locally (Applicant's Representative)

1. The application dated 18.1.2022 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) by email from the applicant's representative. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). Included with the application were a notice to

leave dated 13.12.2021 served under ground 14 of schedule 3 of the Act and the S 11 notice as well as some correspondence from the applicant to the respondent regarding removal of rubbish and reference to some complaints. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 13.1.2022.

2. On various letters and replies the FTT thereafter queried which ground the applicant wishes to rely on, given that the application stated ground 15 and the Notice to Leave was given under ground 14 and given that the antisocial behaviour, which the applicant appeared to found on as the ground for the application, seemed to relate to the behaviour of the respondent's son and other third parties rather than the actual tenant of the property, who is named as the respondent. The correspondence on file is referred to for its terms and held to be incorporated herein.
3. The application was amended from ground 15 to ground 14 on 15.2.2022 and then again back to ground 15 on 25.5.2022. In the email of the applicant's representative of 25.5.2022 it was stated that they had consulted SAL and been advised "we would be better serving on grounds 15 association with someone who has engaged in anti social behaviour".
4. In answer to this email the FTT then wrote on 13.6.2022 in the following terms: " Before a decision can be made, we need you to provide us with the following: 1. Provide authorisation of the agent by the applicant 2. In terms of S 52 (5) of the Private Housing (Tenancies) (Scotland) Act 2016 : "(5)The Tribunal may not consider whether an eviction ground applies unless it is a ground which— (a)is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or (b)has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought." Please advise if you are now only wishing to rely on ground 15, in which case you would have to make representations why the Tribunal should consider it reasonable to allow this to proceed although no Notice to Leave on that ground was served on the tenant. You state in your last email that SAL have advised you would be better serving on grounds 15. It is not clear if you are saying that you wish to amend the application or that you will now serve a Notice to Leave based on ground 15. You may wish to take legal advice on how best to proceed, the Tribunal as an independent judicial body cannot provide advice."

5. In the answering email of 27.6.2022 the following was stated: "Sorry for the delay in reply as i have been on annual leave Can we please proceed on grounds 14 as originally requested. The son is living with the tenant and not visiting I have attached the tenants lease. I hope this is what you need. Do you need a letter form the landlord authorising me to serve notice" The applicant's representative did not provide authorisation other than to send a further copy of the tenancy agreement.
6. The FTT then asked for clarification of the ground again as this appeared now to have changed back from ground 15 as stated in the amendment of 25.5.2022 to ground 14 and on 1.8.2022 the FTT received a response forwarding a mandate in form of an email of the applicant authorising the representative to act on their behalf and confirming that they wish to proceed under ground 14, with no further information provided as to what constituted the antisocial behaviour of the tenant and respondent would be relied on.

DECISION

7. I considered the application in terms of Rule 8 of the 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."

8. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

9. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S55 *"(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.(2)In subsection (1), "the relevant period" has the meaning given in section 54(2).(3)The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3)."*
10. Rule 5 (3) of the FTT's rules of procedure states: *"(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."*
11. The notice to leave relied on ground 14 of schedule 3 of the 2016 Act and was dated 13.12.2021.
12. S 54 (2) applicable to notices to leave served after 3 October 2020 then sets out the relevant notice periods. For a notice to leave relying on ground 14 of schedule 3 of the Act a notice period of 28 days applies. Adding in the 2 days until deemed receipt as stated in S 62 (5) of the Act. The notice thus expired on 12.1.2022.

13. S 64 of the Act defines a 6 months period as a period *“which ends in the month which falls 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.”*
14. In terms of S 55 the landlord may not make an application to the FTT for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired. The date six months after the notice period expired was 12.7.2022 and to be valid an application would have had to have been lodged with the FTT on or before that date.
15. The FTT had on several occasions written to the applicant’s representative requesting clarification and further information/documentation so that the application would meet the criteria for lodging an application of that nature in terms of rule 109 of the FTT’s rules of procedure. In terms of rule 5 (3) of the rules of procedure the application remained held to be not completed without an explanation as to the change of the ground and without a mandate showing the representative was authorized to make the application on behalf of the applicant by 12.7.2022. It is somewhat unfortunate that a further request for information was sent after 12.7.2022 after the expiry of the 6 months period stated in S 55 of the Act. However, it is fact that if the application was to proceed on ground 15, the requested information as per the letter of 13.6.2022 has still not been provided to this date and if the application was to proceed under ground 14, the required and previously requested evidence that the respondent, rather than those visiting or residing with her, was engaged in antisocial behaviour as required in terms of rule 109 (b) (i) of the FTT’s rules of procedure, remains outstanding. The application remained incomplete past the date of 12.7.2022. The period during which the application could be made in terms of S 55 (1) has now expired. In terms of S 55 (1) of the Act it would not be appropriate for the Tribunal to accept an application based on a notice to leave for which the notice period had expired more than 6 months prior to lodging the application. After that date it was no longer possible to make a valid application based on the notice to leave submitted for the reasons stated above.
16. The application is thus 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.

Petra Hennig McFatrige

Legal Member

1 September 2022