



**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

126 Neilston Road, 1/2, Paisley PA2 6EP

Case Reference: FTS/HPC/EV/20/1003

Madhu Jain, 22 Seafield Avenue, Bearsden, Glasgow G61 3LB ("the applicant")

Juozas Kavaliukas, 126 Neilston Road, ½, Paisley PA2 6EP ("the respondent")

1. On 18 March 2020 Castle Residential Letting on behalf of the applicant lodged an application with the First tier Tribunal Housing and Property Chamber (the Tribunal). The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The following documents were lodged in connection with the application:- Tenancy Agreement, Notice to Leave, Notice to Local Authority, email correspondence between the parties, rent statement. The documents referred to above are referred to for their terms and held to be incorporated herein.
2. The Landlord in terms of the Private Residential Tenancy agreement is the applicant in this case. The respondent is the tenant of the property.

3. The application was lodged and dated 18 March 2020. The Notice to Leave is dated 18 March 2020 and in terms of Part 4 of the Notice to Leave the first day on which proceedings can be raised with the First tier Tribunal Housing and Property Chamber is stated in the Notice to Leave as 18 April 2020.
4. The ground of eviction referred to in the Notice to Leave and the application is Ground 12 of Schedule 3 of the Act.

DECISION

5. 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."

6. 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

7. In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Act has to 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
 - iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

8. S 54 of the Act 2016 states:

Restriction on applying during the notice period

(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 until the expiry of the relevant period in relation to that notice.

9. I consider that the requirement in s 54 (1) of the Act is not met in this case. In terms of s 54 (1) an application to the Tribunal can only be made once the notice period has expired. In this case the applicant lodged the application on the same day he sent the Notice to Leave, both are dated 18 March 2020.
10. The Notice to Leave clearly states in part 4 that an application will not be submitted to the Tribunal for an eviction order until 18 April 2020. Despite this it was submitted on 18 March 2020.
11. The application was made prematurely. Therefore application was not validly made. The Tribunal cannot entertain the application. The application is 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.

P.H. McFatridge

Petra Hennig McFatridge

Legal Member

28 April 2020