



**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

6/8 Slateford Gait, Edinburgh, EH11 1GX (Property)

Case reference FTS/HPC/EV/21/1592

Parties

Mrs Wei Ming Wong (Applicant)

Mr Howedi Howedi (Respondent)

SFR Properties (Applicant's Representative)

1. On 1 July 2021 an application dated 30 April 2021 was received from the Applicant's representatives. 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). Enclosed with the application were 1. Notice to Leave and 2. A Section 11 Notice, which did not state the date when proceedings were to be raised.
2. On 16 July 2021 the First-tier Tribunal (the Tribunal) asked the Applicant's representative to provide further information on the following issues: " 1. Please provide a copy of the tenancy agreement. 2. Please provide any further evidence which may be available to support the ground on which your client is seeking the order ie that a family member intends to move into the property. 3. The Notice to the local authority under the Homeless etc (Scotland) Act 2003 is undated and you have not provide evidence of its delivery to the local authority. 4. You require to provide evidence of service of the Notice to Leave on the Tenant. 5. The notice period in the Notice to Leave expired on 27th December 2021. The application is dated 30th April 2021 but was not received by the Tribunal until July 2021. Section 55 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 states " 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.” It appears that the application has been submitted more than six months after expiry of the notice period and is not competent. Please comment. Please provide the information by DATE 21 DAYS, failing which the President may decide to reject the application.”

3. On 3 August 2021 the Applicant’s representative provided the following reply :
“Please find attached additional information that was required. Mr Howedi has been assigned a case work by Edinburgh Council so that he can be allocated appropriate accommodation. The case worker name is Courtney and his contact number is 07874885797 as he is working from home. What we have been led to believe is that has been allocated a house in a new housing development however this has been delayed due to covid, This way we has held off as we were told that he would be able to move by the end of June If there is any other information that you require please let me know.” They forwarded a letter from Craig and Wei Ming Jordan stating their son was to occupy the property. Further enclosed was a partial tenancy agreement copy missing pages 9 to 12.
4. On 12 August 2021 the Tribunal again wrote again in the following terms: “1. The Tribunal had previously asked you to provide a correct S 11 Notice and proof as to when and how the S 11 Notice was served. Please note the S 11 Notice provided is not dated and does not provide the required information as to when proceedings will be raised. You have still not provided this. Please now provide the correct S 11 Notice and proof of service. 2. The Tribunal has previously requested evidence as to how the Notice to Leave was served. Without the information as to when the Notice to Leave was served the Tribunal cannot be certain when the Notice was received. Please now urgently provide this information so that the Tribunal can ascertain the correct expiry date for the Notice to Leave. 3. The Notice to Leave appears to be in the incorrect format and giving an incorrect notice period as you used the original format rather than the format prescribed for Notices served after the Coronavirus (Scotland) Act 2020 came into force. The updated form provided the correct information about the applicable notice periods as amended by the Coronavirus (Scotland) Act 2020. Please make representations as to why you consider the Notice to Leave submitted should be acceptable. 4. The Tribunal further asked you to make representations as to the legal basis on which you consider that the Tribunal may be able to accept the application received on 1 July 2021 although it was received more than 6 months after the period stated in the Notice to Leave expired. You have not provided any legal argument as to why this should be possible. Please do so now. You may wish to take legal advice before replying. 5. Please provide the above now and be advised that the Tribunal may have to reject the application in terms of S 55 of the 2016 Act as previously indicated. “
5. There was initially no reply but on 3 September 2021 a request for an update was received from the representative. The Tribunal then again wrote to the representatives on 6 September 2021 again stating that information requested in the previous letter was still outstanding. As no further information was provided a further reminder dated 9 September 2021 with a further reply time of 19 September 2021 was sent by the Tribunal. No reply has been received to date.
6. The documents referred to above are referred to for their terms and held to be incorporated herein.

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 Tribunal has good reason to believe that it would not be appropriate to accept the application.

RELEVANT LEGISLATION:

Rules of Procedure:

Requirements for making an application

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.

Application for an eviction order

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 **[F72]**(if known); 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

[F73](iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

(c) be signed and dated by the landlord or a representative of the landlord.

Private Housing (Tenancies) (Scotland) Act 2016:

54 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.

(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) in the case of a notice served before 3 October 2020, 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.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

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

55 Restriction on applying 6 months after the notice period expires

(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).

56 Restriction on applying without notifying local authority

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated.

(2) Notice under subsection (1) is to be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

(3) In a case where two or more persons jointly are the landlord under a tenancy, references in subsection (1) to the landlord are to any one of those persons.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(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.

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

The Notice to Local Authorities (Scotland) Regulations 2008

2.—(1) The form of notice to be given under—

(a) section 12A(1) (notice to local authority of proceedings for possession of dwelling house let on protected tenancy or subject to statutory tenancy) of the Rent (Scotland) Act 1984⁽¹⁾;

(b) section 19A(1) (notice to local authority of proceedings for possession of house let on assured tenancy) of the Housing (Scotland) Act 1988⁽²⁾;

(c) section 14(5A) (notice to local authority of proceedings for possession of house let on Scottish secure tenancy) of the Housing (Scotland) Act 2001⁽³⁾;

(d) section 36(6A) (notice to local authority of proceedings for possession of house let on short Scottish secure tenancy) of the Housing (Scotland) Act 2001⁽⁴⁾;

(e) section 11(1) (notice to local authorities of proceedings for possession and enforcement of standard securities) of the Homelessness etc. (Scotland) Act 2003;

(f) section 56(1) (restriction on applying without notifying local authority) of the Private Housing (Tenancies) (Scotland) Act 2016

is as set out in Schedule 1.

REASONS FOR DECISION

[1] In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 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. These requirements reflect the requirements stated in the 2016 Act.

[2] The Tribunal advised the Applicant's Representative that the application was incomplete and required further documents to be produced namely a valid S 11 notice to the Local Authority and evidence to show that the ground is met as required in Rule 109 (b) (i) and (iii).

In terms of Rule 5 (3) 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.

[3] The S 11 Notice did not comply with the requirements in Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 Regulation 2 (1) (f) as it did not state the date on which proceedings would be raised. The evidence for the ground applying, namely the letter from the landlords confirming this dated 29 July 2021 was not provided until 4 August 2021.

[4]As advised by the Tribunal, the Notice to Leave gave the wrong notice period as it was given on an outdated form. The Tribunal notes that application of a wrong notice period itself due to a misinterpretation of the provisions of the Coronavirus (Scotland) Act 2020 schedule 1 para 10 would not lead to the notice being invalid but would mean it cannot be relied upon until the correct notice period expired. Thus the Tribunal was prepared to calculate the expiry of the notice period accordingly. The actual notice period for the relevant ground 5 of schedule 3 of the 2016 Act for any notice sent after 7 April 2020 was 3 months in terms of the amendments to S 54 (2) of the 2016 Act as amended by the Coronavirus (Scotland) Act 2020. The notice period begins on the day the tenant receives the notice to leave from the landlord. Taking into account the provision in S 64 (5) of the Act, the Notice to Leave would be deemed to have been received on either on 2 October 2020 if personally delivered, as this is the date of the notice, or 48 hours after sending if sent by other means as set out in in S 62(5) of the 2016 Act. The Tribunal had repeatedly asked the Applicant to provide proof of service of the Notice to Leave and explained why this was relevant for the calculation of the usability of the Notice to Leave under S 55 of the 2016 Act in light of the time scales involved. The Tribunal required this information to deal with the application and to date this information has not been provided.

[5] In terms of S 55 (1) of the Act 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. In the absence of any further information the Tribunal was prepared to assume for the benefit of the Applicant that the Notice to Leave was sent on 2 October 2021, which would most closely correspond to the calculation of 84 days to 27 December 2020 made in the Notice to Leave. Were this the case then the date which should have been stated in the Notice to Leave as the date when proceedings could be raised would be 5 January 2021. The correct notice period of 3 months would then expire on 4 January 2021 and thus the 6 months period for using the Notice to Leave would expire on 4 July 2021.

[6] The evidence about the grounds was submitted to the Tribunal on 4 August 2021 which on the fact of it appears to be past the time the application could be validly raised and a valid S 11 Notice is still outstanding. The application has not been competently made to date. The Tribunal had given the Applicant ample opportunity to make representations regarding the application of S 55 of the 2016 Act and the Applicant has not done so. Repeated reminders have not led to a full completion of the application. It would not be appropriate for the Tribunal to continue to send further letters requesting information after this has not been complied with for several weeks. There has to be participation by the Applicant to enable the Tribunal to establish whether the application has been made within the statutory time scale and to provide the necessary outstanding information. The Applicant has not done so.

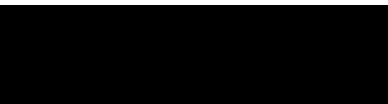
[7] The Applicant has not provided the necessary information after several letters from the Tribunal. The Tribunal considers that taking into account all available information the Applicant has provided the application could not now be completed within the time limit set out in S55 of the 2016 Act. The Applicant has not co-operated with the Tribunal's requests for further information and it would not be appropriate for the Tribunal to accept the application in those circumstances. 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.



Petra Hennig McFatriidge
Legal Member
15 October 2021