



**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

57 Russell Square, Abroath, Angus, DD11 3DQ ("the property")

Case Reference: FTS/HPC/EV/22/1114

Parties

Mr Alan Haggart (applicant)

Ms Caitlin Campbell (respondent)

1. The application dated 19 April 2022 was lodged by the applicant with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) by email from the applicant on 19 April 2022. With the application the applicant lodged a notice document, a S 11 notice to the Local Authority and a signed statement stating he wished to take possession of the property so a family member could move in. The

ground stated in the application is ground 5 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

2. The notice document reads: "NOTICE TO LEAVE NOTICE TO: CAITLIN CAMPBELL REGARDING THE PREMISES AT: Address of premises: 57 Russell Square, Arbroath, Angus DD11 3DQ I hereby give you formal notice to leave the premises by you at the address above by : 15th Day of April 2022. If you do not leave the premises on this day, I will be entitled to make an application for an eviction order on the following business day on the ground specified in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016: • Ground 5: Family member intends to live in the property. SIGNED by the landlord Dated 16th January 2022 Alan Haggart Landlord Alan Haggart"
3. All file documents are referred to for their terms and held to be incorporated herein brevitatis causa.

DECISION

4. 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."

5. 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

Relevant provisions:

In terms of Rule 109 of the Procedural Rules an 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, and
- iv. the ground of 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

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

Reasons:

6. 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 S 62 (1) (d) of the Act references to a notice to leave are to a notice which "fulfils any other requirements prescribed by the Scottish Ministers in regulations. " The Private Residential Tenancies (Prescribed Notices

and Forms) (Scotland) Regulations 2017 in schedule 5 as amended set out the mandatory form to be used for a notice to leave in terms of the Act. The notice given by the applicant does not conform to the statutory form set out in said schedule 5. It does not state the section of the Act under which the notice is given, it does not signpost the recipient to the various organisations which may be able to provide assistance, it does not state the notice period but only gives a date by which the tenant has to leave the property, it lacks part 3 Details and Evidence of Eviction Grounds and it lacks part 4, which requires to state, as explicitly required in S 62 (1) (b) of the Act 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.

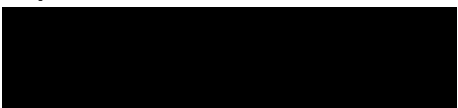
7. In this case the signed and dated application together with the necessary Notice to Leave and evidence of the ground or grounds being met, as required by Rule 109 set out above, were not received by the FTT until 3 December 2020. This is the date on which the application is deemed to be made.
8. The notice lodged is not a valid notice to leave as required by S 52 (3) of the Act and thus the application was lodged without the document required for lodging as stated in rule 109 (b) (ii) of the rules of procedure.
9. It would not be appropriate for the Tribunal to accept an application which is not accompanied by a valid notice to leave. 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 McFatridge
Legal Member
5 May 2022