

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF VALERIE BREMNER, 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

64 Old Monkland Road Coatbridge

Case Reference: FTS/HPC/EV/19/2771

PERWAIZ AKHTAR, ABDUL HALLEM ("the applicants")

GARY LEE POTTER("the respondent")

1. On 5 September 2019 an application was received from the Applicants' representative, Aquila Management Services Limited. The application was made under Rule 109 of the Procedural Rules being an application for an eviction order in terms of Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 on the basis of rent arrears over three consecutive months. The following documents were enclosed with the application:-

2. A Notice to Leave

Proof of delivery of the Notice to Leave

Letter to Tenant with Notice to Leave

Notice in Terms of the Homelessness etc (Scotland) Act 2003.

Certificates of Posting

Track and trace Document
Schedule of Rent Payment

3. By letter of 23rd September 2019 the Tribunal requested further information from the Applicants' representative about the service of the Notice to Leave and it was confirmed that this had been posted only.

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 on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

6. The Applicants seek an Eviction Order in terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The tenancy is said to have commenced on 27th March 2019 with monthly rent of £525.

Section 52 (3) of the Act indicates that a Notice to Leave must accompany an Eviction Application and states as follows :-

52 Applications for eviction orders and consideration of them

(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.

Section 54 of the Act refers to the Notice periods required before an application can be made and states:-

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) expires on the day falling—

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

(ii) 84 days after it begins if subsection (3) does not apply.

Section 62 of the Act gives the meaning of a Notice to Leave and states as follows:-

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.

7. In this application the Notice to Leave is dated 1st August 2019 and the date entered in Part 4 of the Notice, the earliest date when an Application can be made to the First Tier Tribunal was completed as 1st September 2019.

8. The Notice To Leave was posted and was collected and signed for by the Respondent on 6th August 2019 as shown on the Post office track and trace document lodged by the Applicants.

9. Under Section 54 of the Act the relevant notice period required is 28 days because the only eviction ground stated in the Notice is rent arrears.

In Section 65(5) of the Act there is an assumption that the Notice to Leave is received 48 hours after it is sent. In my view that statutory assumption is there to cover the situation where no other evidence is available as to when the Notice was received. Here there is actual evidence of receipt on 6th August 2019 by virtue of the track and trace receipt lodged by the Applicants showing that date. In my view that is the date when the relevant period of notice required in terms of Section 54(2) (a) of the Act begins.

10. If the Notice Period begins the day the tenant receives the Notice to Leave which in this case was 6 August 2019, this Notice period would have expired on 2nd September 2019.

11. In order to comply with Section 62(1)(b) and (4) of the Act the date entered in Part 4 of the Notice to Leave should have been 3rd September 2019, the day after the expiry of the Notice Period.

12. As the Notice to Leave does not fulfil the requirements of section 62 of the Act then it cannot be said to be a properly constituted Notice to Leave as required by the legislation. If the Application cannot be said to fulfil the requirements of section 52 of the Act requiring a Notice to Leave to accompany an application accordingly the Application cannot be said to be competently made.

13. The Tribunal has considered whether the error in the date being specified in Part 4 of the Notice to Leave is a minor error in the Notice which might not "materially affect the effect" of the document as set out in section 73 of the 2016 Act. The Tribunal considers that the error in the date materially affects the validity of the Notice to Leave as it does not give the tenant correct notice of the earliest date when proceedings against him in relation to an eviction order could first be made but gives an earlier incorrect date. Reference is made to the First Tier Tribunal Decision FTS/HPC/18/3231 dated 2 May 2019 in this regard.

14. Accordingly the Tribunal rejects the Application on the basis that the incorrect notice period was given and the Notice to Leave was not properly constituted within the meaning of Section 62 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Valerie Bremner
Legal Member
11 October 2019