



**DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/0946**

**Re: Property at 11 Fore Street, Johnshaven, Montrose, DD10 0EU (“the Property”)**

**Parties:**

Thyme Property Developments Limited (“the applicant”)  
Christopher Mitchell, Michael Mitchell (collectively “the respondents”)

**Joel Conn (Legal Member)**

**BACKGROUND**

1. On 16 April 2018 an application was received from the applicant via his solicitor under Rule 109 of the Rules, being an application by a private landlord for a Private Residential Tenancy Eviction Order in regard to a Scottish Private Residential Tenancy (“PRT”) under which the applicant had leased to the respondents the property from 1 December 2017 at a monthly rent of £650 per month, payable in advance on the first of each month.
2. Attachments were provided with the application including a copy of the PRT Agreement, a Notice to Leave dated 7 March 2018, Certificates of Service by a Sheriff Officer of the Notice to Leave on each of the respondents on 12 March 2018, and a schedule of arrears made up to 1 April 2018.
3. The application was considered by the Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

**DECISION**

4. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

*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.*

(4) *The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

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;*

...

(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. Rule 109, governing the application, further provides:

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

6. After consideration of the application and attachments, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

### **REASONS FOR THE DECISION**

7. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court, [1997] EWCA Civ 1575*. He states: "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is this definition that the Legal Member has considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
8. The requirement to serve a Notice to Leave upon the tenant in a PRT arises from section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016. The notice is in statutory form in terms of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Regulation 6 of the 2017 states that "A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5." The statutory form at schedule 5 provides a pro-forma which includes guidance notes regarding completion of the style. The guidance notes and the form thus both form part of the statutory style.
9. The applicant has used the Notice to Leave style though its completion does not follow the guidance notes. Part 2 of the Notice to Leave style reads:

*Part 2 – EVICTION GROUND(S) BEING USED  
[I/We\*] your [Landlord(s)/Landlord's Agent\*]:*

...

*inform you that if you choose not to leave the Let Property on the date shown in Part 4 of this notice, I/we\* intend to apply to the Tribunal for an eviction order in respect of the Let Property on the following ground(s) which is a ground(s) for eviction as set out in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016*

There then follows the various grounds in that schedule to the 2016 Act with checkboxes so the landlord or landlord's agent can indicate the grounds for eviction.

10. Part 3 of the Notice to Leave style reads:

*Part 3 - DETAILS AND EVIDENCE OF EVICTION GROUND(S)  
[I/We\*] also inform you that [I/we\*] are seeking eviction under the  
above ground(s) for the  
following reasons:  
[State particulars of how you believe the ground(s) have arisen –  
continue on additional sheets of paper if required. Please give as much  
detail as possible including relevant dates, and in cases of rent arrears  
insert the amount of arrears outstanding and the period over which it  
has built up.]”*

This is followed by several blank lines for the landlord or landlord's agent to complete with the particulars. The form thereafter continues:

*It is important that the Tenant fully understands why you are seeking to  
evict them and that the action you are taking is justified. The provision  
of supporting evidence with this notice can help do that.  
[I/We\*] attach the following evidence to support the eviction action:*

This is then followed by a further number of blank lines for inclusion of any evidence.

11. In the Notice of Leave lodged with the application, and apparently served upon both the respondents, the applicant's agent has completed Part 2 by ticking the boxes for "You have breached a term(s) of your tenancy agreement" (being ground 11 of schedule 3 of the 2016 Act) and "You are in rent arrears over three consecutive months" (being ground 12). At Part 3, the applicant's agent has completed only the first set of lines with the following sentence (all in capitals): "You have failed to pay rent as and when due and are now in considerable rent arrears." There is no reference to the amount of arrears or the dates of non-payment. There is no specification as to the term of the agreement breached. In terms of paragraph (3) of ground 11, use of this ground is for a term of the tenancy which "does not include the term under which the tenant is required to pay rent". The Notice to Leave makes no reference to any issue with the tenancy except rental payment.

12. Eviction from a PRT in terms of ground 12 requires there to be at least arrears equivalent to one month's rental payments due as at the "day on which the Tribunal first considers the application". There are further considerations of the Tribunal in regard to whether issues with benefits have resulted in the arrears arising. Implicitly, the purpose of the Notice to Leave – at least in regard to ground 12 - is not simply to initiate eviction and provide the tenant with fair notice of the threat to evict but to provide the tenant with fair notice of the steps necessary to avoid eviction through making payment of the arrears. The statutory guidance notes clearly echo this by stating that:

- "Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up."
- "It is important that the Tenant fully understands why you are seeking to evict them"

Such requirements further reflect the statutory provisions, and case law, in regard to previous forms of Scottish residential tenancies, such as the level of detail of a Form AT6 for assured tenancies under section 19 of the Housing (Scotland) Act 1988.

13. I am thus satisfied that the Notice to Leave is deficient in that it fails to provide any detail as to the reasons behind eviction for ground 11 and, in regard to ground 12, the level of detail is entirely lacking. It fails to meet the statutory style and is insufficient as a basis for an application for eviction in terms of Rule 109 of the Rules. There is no power of the Tribunal to dispense with requirement for a valid Notice to Leave.

14. For the foregoing reasons, the Legal Member does not consider there to be any prospect of success of this application and an application based on the Notice to Leave provided is rejected on the basis that the application is frivolous.

## **RIGHT OF APPEAL**

### **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:-

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

J Conn

Legal Member/Chair

Date

25 April 2018