



**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

Case reference FTS/HPC/EV/22/3694

Parties

Miss Natasha Difulco, Mrs Jacqueline Difulco (Applicant)

Mr Steven Cairns, Laura May Cairns (Respondent)

53 Bogwood Road, Mayfield, Dalkeith, EH22 5EQ (House)

1. The application dated 4.10.22 was received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 7.10.22. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). Included with the application were a notice to leave dated 5.10.21 and a copy of the tenancy agreement and other supporting correspondence but no S 11 Notice as required in terms of S 56 of the Act and no evidence regarding the grounds stated in the

application. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 8.6.22.

2. On 8.11.22 the FTT requested further information from the applicant, in particular clarification on which grounds the application was to proceed on, evidence of the intention to sell the property and a copy of the S 11 notice. On 18.11.22 the applicant replied they only wished to base the application on ground 1 and wrote: The notice to leave that the tenants received is the same notice that Midlothian council received unfortunately i didn't get proof of postage, however i have had it confirmed verbally that they received this. This was sent along side a letter explaining the circumstances at the time. Above is also a picture sent to the letting agent when the notice to leave was signed for by the tenants, unfortunately the letting agent no longer manages the property. The notice to leave states that it is intended to sell the property since it refers to Ground 1, Part 1, of Schedule 3 of the Private housing (Tenancies) (Scotland) Act 2016. If it is intended to rely on this ground, you will require to produce evidence in accordance with sub paragraph 3 of ground 1. • I am unable to access the property to make arrangements to have it surveyed, or make repairs to the property before marketing the property. My financial advisor is aware that i intend to sell the property however there is work that needs to be done before i make these arrangements. I am now in a place where i am struggling to make the mortgage payments to the property due to not receiving any rental payments from the tenants. My mum Jacqueline Difolco has also just recently lost her job and therefore this will cause further strain, my only wish is to gain possession of the property and sell it on, this would be a big weight off financially. I don't know how much longer i will be able to keep up the mortgage payments for my properties and risk losing the house..

DECISION

3. 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."

4. 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

5. 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 S55 *"(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)."*
6. The notice to leave lodged with the application relied on ground 1 of schedule 3 of the 2016 Act and was dated 5.10.21. No proof of service was included.
7. S 54 (2) applicable to notices to leave served after 3 October 2020 then sets out the relevant notice periods. For a notice to leave relying on ground 1 of schedule 3 of the Act the notice period relevant at the time was 6 months.

8. S 64 of the Act defines a 6 months period as a period "*which ends in the month which falls six months after the month in which it began, either – (a) on the same day of the month as it began, or (b) if the month in which the period ends has no such day, on the final day of that month.*"
9. The FTT considers that the expiry date of the notice period for the notice to leave was correctly reflected in the Notice to Leave if the notice was sent by email or recorded delivery with the date when proceedings first could be raised stated as 8.4.22. In terms of S 55 the landlord may not make an application to the FTT 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. The date six months after the notice period expired was 7.10.22 and to be valid an application would have had to have been lodged with the FTT on or before that date.
10. Whilst the application was received on 7.10.22, in terms of Rule 5 (3) of the Rules of Procedure an application is 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.
11. In terms of rule 109 (b) (i) of the Rules of Procedure the application has to be accompanied by evidence showing that the eviction ground or grounds has been met and Ground 1 of schedule 3 specifies evidence which would meet that test, although that is not prescribed as the exclusive method of providing such evidence. In this case the Applicants have not provided any evidence and certainly not the type of evidence suggested by the legislation.
12. In terms of S 56 of the Act and rule 109 (b) (iii) of the Rules of Procedure one of the documents necessary to make an application under S 51 of the Act is "a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act". This notice is in a specific form and such a notice has still not been provided by the Applicants. The documentation provided shows that the Applicants may have sent a copy of the Notice to Leave to the local authority, however, that is not a notice in terms of S 56 of the Act.
13. It is not no longer possible to provide the missing evidence and the missing S 11 notice as the time for completion of a valid application in light of the dates on the Notice to Leave has expired in terms of S 55 of the Act.
14. As the application was not validly completed prior to the date 6 months after the notice

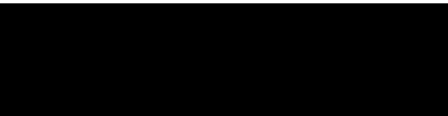
period expired, the application must be rejected.

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

12 December 2022