



**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

9/3 Piersfield Grove, Edinburgh, EH8 7BU (the property)

Case Reference: FTS/HPC/EV/21/1756

Parties

Mr Jeromey Jackson (Applicant)

Ms Charlotte-Rose Connolly (Respondent)

Lyons Davidson Solicitors (Applicant's Representative)

1. On 22 July 2021 the Applicant's representative made an application 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). This was originally made on grounds 8, 11 and 12. There was extensive correspondence between the First-tier Tribunal for

Scotland (FTT) and the Applicant's representative regarding the Notice to Leave and the requirements of submitting certain further information. The correspondence is referred to for its terms and held to be incorporated herein. In an email of 12 August 2021 the Applicant's representative noted that the application should only proceed on ground 12 and that the Notice to Leave should have shown as an expiry date 12 January 2022, not 12 December 2021.

2. The Applicant's representatives then stated to the FTT in an email of 9 September 2021 *"Sorry for the delay. I have now obtained instructions from my client. I wish to continue with the application and ask the Tribunal to use its power to rectify the notice to leave and correct the date therein to 12th January 2012. I request this in the interests of justice. Please find attached an updated rent statement. You will note that the amount owed by the tenant continues to increase (albeit part payments are now being made). The tenant now owes £4,699.03 which is 7.23 months rent and is more than the tenant can hope to pay back. It would be highly prejudicial to my client if this case was dismissed and we had to reapply as the debt will continue to increase and my client has little chance of getting any of this money back. Moreover, my client has done everything required by the pre-action protocol and given the tenant plenty of opportunity to agree a payment schedule to repay the debt and the tenant has refused to engage in this process. As for the s.11 notice, I will now approach the local authority to see if they can confirm receipt. If they cannot confirm receipt, I also ask that the Tribunal used its power to rectify this. The letter was posted by our postal department in Bristol in good faith and should have been received. I am also willing to resend the notice if that will help."*
3. On 23 September 2021 the FTT wrote: *"Thank you for your response of 9th September 2021 confirming you wish to correct the error in the date on the notice but can you please clarify if you wish to ask the Tribunal to consider this application prior to the end of the correct notice period as previously advised knowing that this will be considered at any case management discussion only and you will be invited to make representations to the Tribunal then as to why it would be reasonable for them to do so? Can you please also let us have any response from the local authority confirming receipt of the S11 notice? Please note that if you cannot produce such a response we will accept evidence of service of a fresh notice to the local authority for instance by post or e-mail. Please let us have your response within 14 days"*
4. This was followed up by further requests for a reply in emails of the FTT to the Applicant's representative on 7 October 2021 and 5 November 2021. No reply to the two outstanding matters was received to date.
5. The documents referred to above are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

7. 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.

REASONS FOR DECISION

8. Applicable legislation:

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

S 54 of the Private Housing (Tenancies) (Scotland) Act 2016 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.

S56 of the Private Housing (Tenancies) (Scotland) Act 2016 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.

9. The Notice to Leave provided with the application did not comply with the notice period requirements of 6 months, being dated 12 July 2021 and giving as the date in terms of S 62 (4) the Act the date of 12 December 2021. The Applicant asked the FTT to “ *to use its power to rectify the notice to leave and correct the date therein to 12th January 2012*”. The FTT does not have that power.

10. The notice period for ground 12 of schedule 3 of the Act as stated in the correspondence

is 6 months. In terms of paragraph 10 (1) (b) of schedule 1 of the Coronavirus (Scotland) Act 2020 “where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1-9 it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) **until the date on which it could have been relied upon had it been correctly completed.**” The application is premature at this stage. The Notice to Leave, however, is not invalid but simply has to be treated by the FTT as if it showed the correct date, in this case 12 January 2022.

11. Whilst the Applicant’s representative had at some point requested to continue with the application, it was not clear how this should be implemented and the FTT advised on 3 separate occasions that this must be clarified. No answer to these requests of 23 September 2021, 7 October 2021 and 5 November 2021 were received. S 54 (1) of the 2016 Act states that 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. On the basis of the information submitted the application is lodged before the expiry of the correct notice period and thus lodged prematurely.

12. In terms of S56 of the Private Housing (Tenancies) (Scotland) Act 2016 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.” The Application was not accompanied by proof of service of the Notice in terms of S 56 as required. The Tribunal requested this document on 3 occasions. No answer to these requests of 23 September 2021, 7 October 2021 and 5 November 2021 were received although the Applicant’s representative was advised clearly that evidence of the S 11 notice having been sent should be submitted and what evidence would be accepted.

13. In terms of rule 27 (1) of the Procedure Rules the FTT may dismiss the whole or part of the

proceedings if the applicant failed to co-operate with the FTT to such an extent that the FTT cannot deal with the proceedings justly and fairly. It is not appropriate for the FTT to continue to correspond in terms of a premature and incomplete application if the Applicant's representative clearly no longer engages in the process and leaves 3 requests of the FTT for further information unanswered.

14. It would not be appropriate for the Tribunal to accept the application for the three reasons stated above. The application is thus rejected. This rejection decision would not prevent a new application to be raised once the notice period has expired.

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

3 December 2021