



**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/23/0707

Parties

Mr Saad Mustafa Aladhami (Applicant)

Mr Naser Ali Melad Algwedi, Mrs Aisha M Alashter Algwedi (Respondent)

21/3 7 St Mungo Place, Townhead, Glasgow, G4 0PE (House)

1. On 5.3.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules. The application did not refer to a specific ground listed in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). It did make reference to an alleged overcrowding situation.
2. In letters dated 24.3.23, 2.5.23, 13.6.23 and further communications from the FTT

regarding the format of submitting further evidence, the FTT requested further information and documentation. It pointed out to the Applicant that in order to make a valid application he had to amend the application to show one of the grounds stated in schedule 3 of the Act, had to submit the required evidence for this, had to supply a valid S 11 notice and a valid notice to leave to the tenants together with proof of service.

3. The Applicant provided a number of documents between 6.4.23 and 29.6.23, which included an incomplete S 11 notice, correspondence with the local authority regarding and assessment for overcrowding and measurements of the property together with information regarding the occupancy of same. He also provided further documents referred to as notices to leave.
4. The documents lodged by the applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

DECISION

5. 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."

- 6. 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

1. The documents required in terms of rule 109 (b) i, ii and iii were not provided, despite the FTT having requested these.
2. After extensive correspondence the Applicant stated that the application is based on ground 18 of schedule 3 of the Act. Ground 18 required that an overcrowding statutory notice has been served on the landlord. The email dated 7.7.23 from Mr Anderson of Glasgow City Council shows that a visit for the purpose of assessing if a statutory notice should be served had been undertaken on 5.7.23. It is clear from the correspondence that as of the last date of further documents having been produced by the Applicant said notice had not been issued. Thus the evidence to support ground 18 has not been lodged in terms of the requirement of rule 109 (b) (i).
3. The Applicant has provided several documents he described as Notice to Leave. The Tribunal considers that what is required in terms of rule 109 (b) ii is a valid Notice to Leave as defined in S 62 of the Act. S 62 (1) (d) requires the notice to fulfil any other requirements prescribed by Scottish Ministers. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended set out the format and information necessary for a Notice to Leave. The notices sent by the Applicant are not on the prescribed format, do not set out the eviction grounds stated in schedule 5 of the Act, do not state the date before which an application for eviction will not be submitted as required in S 62 (1) (b). They do not give the information stated in the statutory form
4. The notice is further invalid due to the date stated as the date on which the tenants have to vacate the property. In terms of S 62 (4) the date stated in the Notice to Leave is to be

calculated in terms of the notice period stated in S 52 of the Act and a day to be added. The latest notice on which the application appears to be based is dated 4.4.23 and states as the date when the tenants have to vacate the property 18.6.23. Even if the notice was hand delivered on 4.4.23 this does not provide the required 84 days notice for ground 18 stated in S 52 of the Act and thus the date of 18.6.23 is not a valid date to be entered into a Notice to Leave in terms of S 62 (1) (b) and (4) of the Act for a notice based on ground 18. The Applicant has not provided a Notice to Leave as required in terms of rule 109 (b) (ii).

5. S 56 of the Act specifies that a landlord may not make an application to the FTT 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 and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. Rule 109 (b) iii requires this form to be lodged with the application. Whilst the Applicant has provided a partial S 11 notice in his email of 6.4.23 together with confirmation that the local authority had received this, the notice sent to the local authority was not in the format prescribed and in particular did not provide the start date of the tenancy and the legislation under which the local authority is notified as required in terms of the Notices to Local Authorities (Scotland) Regulations 2008 as amended and S 11 (3) of the Homelessness etc. (Scotland) Act 2003. Thus the lodging requirement of rule 109 (b) iii is not met.
6. As of 20.7.23 the documents required for a valid application are still not produced.
7. Because the requirements for lodging a valid application in terms of rule 109 are not met, it would not be appropriate for the Tribunal to accept the application, which essentially remains incomplete.
8. The application is accordingly rejected.
9. For the avoidance of doubt, this rejection does not prevent the Applicant to lodge a fresh application if he so wishes once he is in a position to produce the required evidence, documents and notices.

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.

1.Taylor
P Hennig-McFatrige

Petra Hennig McFatridge
Legal Member
20 July 2023