



**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

54C School Street, Fraserburgh, Aberdeenshire, AB43 9HY

Case reference FTS/HPC/EV/21/0819

Parties

Bruce Quality Homes Ltd (Applicant)

Miss Kareen Fraser (Respondent)

1. On 1 April 2021 an application dated 30 March 2021 was received from the Applicant. The application was made 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). The following documents were lodged in connection with the application:- Tenancy Agreement, Notice to Quit, Form AT6.
2. On 15 April 2021 the First-tier Tribunal (the Tribunal) asked the Applicant to provide further information on the following issues: " 1. As the tenancy started in May 2019, it appears that it is a private residential tenancy in terms of the Private Housing Tenancies

(Scotland) Act 2016. The eviction grounds you have referred to in the application form are from the wrong legislation, the Housing (Scotland) Act 1988. Please provide a replacement form which details eviction grounds from the correct legislation. 2. You have submitted a document entitled "Notice to Leave". However, this is not in the format prescribed by the Private Housing Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Please provide a Notice to leave in the correct format. Please note that this required to be served on the respondent and evidence of service is also required. The current version of this form can be found on the Scottish Government website as the form and notice periods have been amended by Coronavirus regulations. Please note that the notice to leave must specify all of the eviction grounds relied upon in the application. 3. Please provide a copy of the section 11 notice sent to the local authority, and evidence that it was sent. 4. Please provide evidence in support of all of the eviction grounds relied upon. Please reply to this office with the necessary information by 29 April 2021. If we do not hear from you within this time, the President may decide to reject the application." No reply was received.

3. On 10 May 2021 the Tribunal sent a further reminder to the Applicant.
4. On 12 May 2021 the Applicant advised the Tribunal that she could not proceed with the application herself and that she had instructed Messrs T C Young to represent her. The address of T C Young was then provided by the Applicant on 17 May 2021. Thereafter the Tribunal sent a further reminder enclosing the previous request for further information to the Applicant's representatives on 1 June 2021. No reply was received.
5. The Tribunal sent a further reminder letter on 29 June 2021 to Messrs T C Young, asking for a reply by 14 July 2021. The following reply was received on 1 July 2021: *"Although I am instructed by the Applicant in relation to recovery of possession of the property at 54C School Street, Fraserburgh AB43 9HY, I am not instructed to represent the Applicant in relation to case reference FTS/HPC/EV/21/0819. I was unaware that proceedings for possession had already been raised and have not had sight of this application. You should continue to correspond with the applicant directly in relation to this case reference."*
6. The Tribunal notified the Applicant of this communication on 20 July 2021 and asked for a reply to the still outstanding request for further information by 3 August 2021. No further communication was received from the Applicant.
7. The documents referred to above are referred to for their terms and held to be incorporated herein.

DECISION

8. 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."

9. 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

In terms of 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

The Tribunal advised the Applicant and the Applicant's Representative that the application was incomplete and required further documents to be produced. The Applicant was given ample opportunity since 15 April 2021 to produce the documents required by Rule 109 (b) (ii) and (iii) and to make representations as to the validity of the Notice provided and the content of the application. As of 12 August 2021 this has still not been provided.

The lodging requirements for an application under Rule 109 are not met.

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 a Notice in terms of S 56 as required. The Tribunal requested this document repeatedly and it was not provided.

The Notice provided with the application was made in form of an AT6 and a Notice to Quit and not in the prescribed form for a Notice to Leave in terms of S 62 (1) (d) of 2016 Act and the Private Housing Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The Applicant was advised that a correct Notice to Leave was required and did not provide

same. No evidence of service of a Notice to Leave or the Notices enclosed with the application was provided at any point.

The Applicant was advised to provide information by 3 August 2021 at the latest and has not provided this.

The application was not validly made. It did not meet the lodging criteria for an application under Rule 109.

Furthermore the Applicant has failed to reply to repeated requests for further information and thus appears not to be insisting on the application any longer.

It would not be appropriate for the Tribunal to accept the application. The application is 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 McFatrige

Legal Member

12 August 2021