



**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

West Saline House, Saline, KY12 9UG ("the property")

Case Reference: FTS/HPC/EV/20/2428

Mr Ian Cuthbertson
Thorny Hill Farn, by Saline, KY12 9UG
("the applicant")

Miss Julie-Anne Greig
West Saline House, Saline, KY12 9UG
("the respondent")

1. The application dated 17 November 2020 was made to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules 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, 2 copy articles from Dunfermline Press, Notice to Leave

2. There was no S 11 notice to the local authority.
3. The Notice to Leave states as the grounds for eviction grounds 11, 13 and 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice to Leave is dated 24 March 2020 and states as the date on which proceedings could be raised 22 April 2020.

DECISION

4. 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."

5. 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

6. In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the 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
7. In terms of S 52(3) of the Act :”An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
8. In terms of S 55 (1) of the Act:” 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.”
9. In terms of S 56 of the Act :”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.”
10. The application is rejected because the applicant has not provided the documents which are required to be lodged in terms of Rule 109 (iii) of the Procedure Rules and S 56 of the Act in that no S 11 Notice was provided with the application.
11. The application is also rejected because it was lodged more than 6 months after the expiry of the notice period for the Notice to Leave on which the application is based.

12. The Notice to Leave is dated 24 March 2020. The Notice to Leave states as the date on which proceedings can be raised 22 April 2020. In order for the calculation of that date to be correct in terms of S 62 (1) (b) and S 62 (4) of the Act it would have to have been served personally on 24 March 2020. That date falls outwith the period during which the amended notice periods in terms of the Coronavirus (Scotland) Act 2020 apply.
13. In terms of S 54 of the Act the notice period for the grounds mentioned in the Notice to Leave, grounds 11, 13 and 14, at the time when the Notice to Leave was dated, was 28 days.
14. In terms of the information on the Notice to Leave the 28 day period of the notice would have expired on 21 April 2020. Calculating the period of 6 months after the expiry of that notice period in terms of S 55 (1) of the Act, an application based on that Notice to Leave would have to be raised with the FTT by 21 October 2020. The application was not raised until 17 November 2020, which is more than 6 months after the expiry of the notice period for that Notice to Leave.
15. It would not be appropriate for the Tribunal to accept an application which does not comply with the lodging requirements stated in Rule 109 of the Procedural Rules, does not comply with the lodging requirement stated in S56 (1) of the Act and which is based on a Notice to Leave which has expired in terms of S 55 (1) of the Act and thus can no longer form the basis of a valid application in terms of S 52 (3) of the Act.

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

Petra Hennig McFatridge
Legal Member
26 November 2020