

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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 Rules")

In connection with

4/39 220 Wallace Street, Glasgow, G5 8AJ

Case Reference: FTS/HPC/EV/19/3764

Mr Gordon Campbell ("the Applicant")

Miss Ashleigh Dickson ("the Respondent")

On 25th November 2019 the Applicant lodged an application under Rule 109 seeking eviction of the Respondent from the Property.

The Notice to Leave was dated 27th October 2019, and stated that an application would not be made to the Tribunal before 23rd November 2019. In terms of the Tenancy Agreement the Respondent was entitled to 28 days' clear notice. If the Notice is served by post or email, and it was served by post, section 62(5) of the Private Housing (Tenancies) Scotland Act 2016 states that it is assumed that the tenant will receive the Notice To Leave 48 hours after it is sent, and in section 54 the relevant period begins on the day the tenant receives the Notice To Leave from the

landlord and expires on the day falling 28 after it begins. The respondent has therefore only been given 27 days' notice, and the Notice To Leave is invalid.

It should also be noted that ground of eviction used in the Notice To leave does not match the narrative given in part 3 of the Notice, and that the grounds of eviction used in the Application have not been entered in the Notice To Leave. Only grounds intimated on the Notice To Leave can be used to pursue the application.

DECISION

I considered the application in terms of Rule 8 of the Chamber 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."

2 After consideration of the application and supporting documentation, I consider that the application should be rejected on the basis that it is not appropriate to accept it in terms of Rule 8(1) (c) of the Procedural Rules.

3

REASONS FOR DECISION

Insufficient notice has been given of the Notice To Leave, and the Notice itself is defective in terms of the ground used.

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.

Alison Kelly

Miss Alison Kelly
Legal Member
16th December 2019