



**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

1C Inness Park Road, Skelmorlie, PA17 5BA

Case Reference: FTS/HPC/EV/21/1577

Parties

Mr Colin Galloway (Applicant)

Mr John Cole (Respondent)

Bannatyne Kirkwood France & Co (Applicant's Representative)

1. On 1 July 2021 an application dated 1 July 2021 was received from the Applicant's representatives. 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 covering email stated that the following documents were lodged in connection with the application:- 1. Forms E & F and Papers apart 2. PRT 3. Rent Statement 4. Pars emails (x2) 5. Notice to Leave and delivery receipt 6. Section 11 Notice and intimation emails. However, in fact the Notice to Leave was not enclosed with

the application.

2. On 20 July 2021 the First-tier Tribunal (the Tribunal) asked the Applicant's representative to provide further information on the following issues: " Before a decision can be made, we need you to provide us with the following: 1. Please provide a copy of the Notice to leave which is referred to in the application, but not provided. 2. Please provide evidence of the date on which the Notice to leave was sent as this does not appear to have been provided. 3. Please provide copies of the PARs letters as only the emails sending these have been provided.
3. On 2 August 2021 the Applicant's representative provided the missing Notice to Leave document. This showed that the Notice to Leave was dated 28 July 2020 and the date stated in part 4 was 31 January 2021. The accompanying email showed that the Notice to Leave was sent to the Respondent by email on 28 July 2020. The notice period on the Notice to Leave is stated as 6 months.
4. The documents referred to above 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.

RELEVANT LEGISLATION:

Rules of Procedure:

Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a) state—

- (i) the name, address and registration number (if any) of the landlord;
- (ii) the name, address and profession of any representative of the landlord;
- (iii) the name and address of the tenant **[F72]**(if known); and
- (iv) the ground or grounds for eviction;
- (b) 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; and
 - (iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
 - [F73]**(iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and
- (c) be signed and dated by the landlord or a representative of the landlord.

Private Housing (Tenancies) (Scotland) Act 2016:

54 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.

(2) The relevant period in relation to a notice to leave—

- (a) begins on the day the tenant receives the notice to leave from the landlord, and
- (b) in the case of a notice served before 3 October 2020, expires on the day falling—
 - (i) 28 days after it begins if subsection (3) applies,
 - (ii) three months after it begins if subsection (3A) applies,
 - (iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

- (i) 28 days after it begins if subsection (3B) applies,
- (ii) three months after it begins if subsection (3C) applies,
- (iii) six months after it begins if neither subsection (3B) nor (3C) applies.

55 Restriction on applying 6 months after the notice period expires

(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 more than six months after the day on which the relevant period in relation to that notice expired.

(2) In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) 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.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

REASONS FOR DECISION

[1] 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

[2] The Tribunal advised the Applicant's Representative that the application was incomplete and required further documents to be produced namely the Notice to Leave required in Rule 109 (b) (ii).

In terms of Rule 5 (3) the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. S 52 (3) of the Act requires an application to be accompanied by the Notice to Leave. The Act does not provide any option for the Tribunal to entertain an application without this.

[3] The Notice to Leave in this case was emailed to the Respondent on 28 July 2020. The notice period for a Notice to Leave given under ground 12 of schedule 3 of the Act is stated as 6 months in Section 54 (2) of the Act for Notices to Leave issued after the Coronavirus (Scotland) Act 2020 came into force. The notice period begins on the day the tenant receives the notice to leave from the landlord. Taking into account the provision in S 64 (5) of the Act, the Notice to Leave would be deemed to have been received on 30 July 2020. The notice period thus expired on 30 January 2021.

[4] 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. The last date on which an application could have been made based on a Notice to Leave for which the notice period expired on 30 January 2021 was thus 30 July 2021.

[5] The Notice to Leave was submitted to the Tribunal on 2 August 2021 and on this day the application was then held to be made. The application was not made within the 6 months period of the notice period expiring. The application was not validly made. It would not be appropriate for the Tribunal to accept the application. The application is rejected.

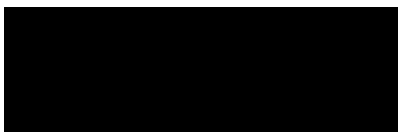
[6] For the avoidance of doubt, the fact that the letter of the Tribunal referred to a date of 3 August 2021 for the production of further documents does not affect and cannot change the statutory provision stated above. At the time the Tribunal issued the letter to the Applicant's representative the Tribunal would not have been able to identify the issue because it did not have sight of either the actual Notice to Leave or the email confirming when the Notice to Leave was sent.

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
11 August 2021