



**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

Property 177 Croftend Avenue Glasgow G44 5PG

Case Reference: FTS/HPC/EV/20/0965

Adolphus Properties Ltd ("the applicant")

Elizabeth Miller ("the respondent")

1. On 18 March 2020 the application dated 12 March 2020 was received by the First-tier Tribunal for Scotland Housing and Property Chamber (the Tribunal).
2. 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: rent statements in 2 parts, copy Notice to Leave dated 23 January 2020, email 11 March 2020 from the applicant authorizing the applicant's representative Bellus Lettings to sign the Notice to Leave and email 5 March 2020 to plsupportofficer@glasgow.gov.uk by Bellus Lettings sending a copy of the Notice to Leave, The documents referred to above are referred to for their terms and held to be incorporated herein.

3. The Notice to Leave refers to ground 12 of schedule 3 of the Act “you are in rent arrears over 3 consecutive months”. The application refers only to ground 11 of schedule 3 of the Act stating that the respondent is persistently delaying to pay rent.
4. On 23 March 2020 the Tribunal had written to the applicant’s representatives as follows:
“The following further information is required from you before your application can proceed to the Chamber President for consideration: A COPY OF THE NOTICE GIVEN TO THE LOCAL AUTHORITY AS REQUIRED UNDER SECTION 56(1) OF THE 2016 ACT Please reply to this office with the necessary information by 30 March 2020, otherwise the application may be rejected.”
5. No reply has been received.

DECISION

6. 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."

7. 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

Relevant legislation:

Rule 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
- iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

S 52 of the Act states: 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.

S 56 of the Act states: 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.

(3) In a case where two or more persons jointly are the landlord under a tenancy, references in subsection (1) to the landlord are to any one of those persons.

8. I consider that the lodging requirements in terms of Rule 109 are not met for the following reasons:
9. The application is not accompanied by a copy of the Notice given to the local authority as required under section 56 (1) of the 2016 Act and Rule 109 (b) (iii). The Tribunal had written to the applicants' representatives on 11 March 2020 requesting that this be lodged and no reply has been received to date. Without this the application is incomplete.
10. In terms of S 56 (1) of the Act no application to the Tribunal may be made without having given such notice. In the absence of any evidence of such a notice having been given the application was not validly made.
11. I further consider that in terms of S 52 (5) of the Act it would not be appropriate to accept the application. The ground stated in the Notice to Leave was ground 12 of schedule 3 of the Act. The ground stated in the application was ground 11 of schedule 3 of the Act. No explanation was provided as to why the tribunal should allow a ground not stated in the

Notice to Leave to be included in the application.

12. For the reasons stated above the application was not validly made. 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 McFatridge

Legal Member

10 August 2020