



**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

105 Martin Avenue, Irvine, KA12 9NT ("the property")

Case reference FTS/HPC/EV/22/1323

Parties

Erchi Ltd (Applicant)

Miss Jacqueline Kerr (Respondent)

McGowan Properties Limited T/A Currie Lettings (Applicant's Representative)

1. The application dated 9.5.2022 was lodged with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) by email from the applicant's representatives on 9.5.2022. Included with the application were a

an email authorizing the agent to act on behalf of the applicant, a notice to leave dated 6.5.2021, recorded delivery track and trace showing this was signed for by the respondent on 8.5.2021, the S 11 notice, a copy of the Private Residential Tenancy Agreement between the parties over the property commencing on 1.10.2018, various letters to the respondent from the applicant's agents and a rent statement, which showed significant arrears. The date entered in part 4 of the Notice to leave as the date when proceedings could first commence was stated as 10.11.2021.

2. On 31.5.2022 the FTT requested further information from the applicant's agents to be provided by 14.6.2022, namely confirmation that the S 11 notice had been served on the local authority and a rent statement showing the arrears development over the duration of the tenancy. These documents were provided to the FTT on 13.6.2022.

DECISION

3. 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."

4. 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 provisions:

S 55 of the Act 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).

Reasons:

5. In terms of S 52 (3) of the Act an application must be accompanied by a notice to leave which has been given to the tenant. In terms of S55 an application may not be made 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 has expired.
6. In this case the signed and dated application together with the necessary supporting documents were not lodged with the FTT until 9.5.2022.
7. The notice to leave relied on ground 12 of schedule 3 of the 2016 Act and was served on 8.5. 2021. In terms of S 54 (2) (c) (iii) of the 2016 Act as amended by the Coronavirus

(Scotland) Act 2020 the notice period for a notice to leave based on ground 12 of schedule 3 of the 2016 Act was 6 months. In terms of S 62 (5) the date of expiry of the notice to be entered in the notice to leave is to be calculated on the assumption that the tenant received the Notice to Leave 48 hours after it was sent. This would mean that the notice was deemed to have been received on 8.5.2022, 48 hours after it was sent on 6.5.2022 and in fact the recorded delivery track and trace confirms that the notice to leave was as a matter of fact received by the tenant on 8.5.2022.

8. S 54 (2) of the Act provides: “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”. In this case this is the date of 8.5.2022
9. S 54 (2) applicable to notices to leave served after 3 October 2020 then sets out the relevant notice periods. For a notice to leave relying on ground 12 of schedule 3 of the Act S 54 (2)(c) (iii) provides that the notice period is 6 months. S 64 of the Act defines the 6 months period as a period “which ends in the month which falls six months after the month in which it began, either – (a) on the same day of the month as it began, or (b) if the month in which the period ends has no such day, on the final day of that month.” In this case the notice period began on 8.5.2021 and thus the 6 months notice period expired on 8.11.2021.
10. In terms of S 55 (1) of the Act, in order to support a valid application, the notice to leave could not be used more than six months after the day on which the notice period expired namely 6 months after 8.11.2021. In terms of said legislation the application thus had to be made on or before 8.5.2022.
11. The notice to leave was wrongly calculated on the basis that the notice expired on 9.11.2021, thus giving the date on which proceedings could first be raised 10.11.2021. However, this, as set out above, was not the correct expiry date of the notice.
12. In terms of regulation 4 of The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2022, paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 continues to apply for notices to leave served prior to 30.3.2022. Paragraph 10 provides, Errors in notices

“10(1)Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—

(a) the notice is not invalid by reason of that error, but

(b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.

(2) Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.

(3) This paragraph applies to—

(a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,.... while this paragraph is in force.”

13. The FTT considers that correctly applying the relevant provisions, the expiry date of the notice period for the notice to leave was 8.11.2021, namely 6 months after the notice to leave had been received by the tenant on 8.5.2021. In terms of S 55 the landlord may not make an application to the FTT 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 date six months after the notice period expired was 8.5.2022 and to be valid an application would have had to have been lodged with the FTT on or before that date. It was lodged on 9.5.2022. In terms of S 55 (1) of the Act it would not be appropriate for the Tribunal to accept an application based on a notice to leave for which the notice period had expired more than 6 months prior to lodging the application.

14. Furthermore, rule 5 (3) of the FTT’s rules of procedure states: “(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.”

15. In this case production of further documents had been requested by the FTT. This was received on 13.6.2022. The date of 13.6.2022 is clearly out with the 6 months period from the expiry of the notice to leave stated in S 55 (1) of the Act.

16. However, as stated above, even without the request for further information leading to the date of the application being formally made on 13.6.2022 and considering instead the date the application was first lodged with the FTT on 9.5.2022, the application was lodged out with the period stated in S 55 and thus it would not be appropriate for the

FTT to accept it. The application is thus 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

27 June 2022