



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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”)

Chamber Ref: FTS/HPC/EV/19/2252

Re: Property at 32 Mulgrew Avenue, Saltcoats, Ayrshire, KA21 6HP (“the Property”)

Parties:

George McMahon (“the Applicant”)
Elaine Howie (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 18 July 2019 the Applicant drafted an application under Rule 109 of the Rules, being an “application for eviction order” in relation to a private residential tenancy, submitting it shortly thereafter.
2. On 14 August 2019, after an initial review by a different Legal Member, the Tribunal wrote to the Applicant requesting clarification of five matters. The first was in relation to whether the Applicant was the sole landlord, as the Tribunal’s title searches suggested he was a co-owner along with a relative. In the event that the relative remained a co-landlord, the Applicant was asked to ensure the relative provide consent to the application. The other four matters related to the service of the Notice to Leave, the sufficiency of its contents and the sufficiency of the application documents supporting it. The Applicant was given until 28 August 2019 to respond. The Applicant made no response to that letter.
3. On 16 September 2019, I further reviewed the application as the Legal Member assigned as In-House Convenor. I noted that, in addition to the points in the letter of 14 August 2019, there was no copy of the notice given to the local authority as required under section 56(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (which is the form to the relevant local authority’s Homelessness team under section 11(3) of the Homelessness etc. (Scotland) Act 2003). On my instruction, the Tribunal wrote to the Applicant on 18 September 2019 asking for a copy of the Homelessness notice as well as a response to the points raised in the 14 August 2019 letter. The Applicant was given until 2 October 2019 to respond.
4. A response was received by email from the Applicant on 1 October 2019 with what was described by the Applicant as “Proof of ownership of the property”.

The Applicant attached one letter from the missives relative to the purchase of the Property in 2011 by the Applicant and the relative, plus two pieces of correspondence from their solicitor in regard to the sale. The documents certainly tended to confirm the view that the Applicant was not the sole landlord. None of the documents, however, provided an answer to whether the relative consented to the application nor any current contact details for the relative. There was no answer to any other point raised in the letters of 14 August or 18 September 2019.

5. I have reconsidered the application today as Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

6. I considered the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

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. ...

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—

...

- c) *they have good reason to believe that it would not be appropriate to accept the application;*

...

(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. Rule 109 requires:

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; 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

(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.

8. I further considered all those Rules in line with Rule 2; the over-riding objective which narrates:

(1) *The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*

(2) *Dealing with the proceedings justly includes—*

(a) *dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*

(b) *seeking informality and flexibility in proceedings; ...*

(e) *avoiding delay, so far as compatible with the proper consideration of the issues.*

9. After consideration of the application and supporting papers, the application is incomplete under:

a. Rule 109(a)(ii) as there is good reason to hold that there is a co-landlord whose details are not stated in the application;

b. Rule 109(b)(iii) as there is no notice to the local authority; and

c. Rule 109(c) as there is good reason to hold that there is a co-landlord who has not signed the application (or otherwise consented to it proceeding).

I consider that the application should be rejected under Rule 8(1)(c) of the Rules for the good reason that, as an incomplete application lacking the above information, it cannot be accepted.

10. The Applicant has been afforded sufficient time to provide the necessary information to complete the application. The Applicant has failed to do so and in consideration of the over-riding objective, especially that of avoiding delay, it is

appropriate that the decision to refuse the application is made at this time so as to conclude matters. In any event, given the unresolved issues regarding the Notice to Leave, identified in the letter of 14 August 2019 to the Applicant, there would seem little utility in providing the Applicant with a further opportunity to complete the application simply for it to falter after service on the Respondent.

RIGHT OF APPEAL

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:-

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Joel Conn

Legal Member/Chair

Date

16 October 2019