



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/19/2818

Re: Property at Flat 1/2, 3 Craigie Street, Glasgow, G42 8NG (“the Property”)

Parties:

Miraj Ahmad (“the Applicant”)
Dhani Khari Gowans (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 3 September 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 26 September 2019, after an initial review by a different Legal Member, the Tribunal wrote to the Applicant requesting a “valid Notice to Leave and proof of it having been served”, evidence to back up the grounds of eviction specified in the Notice to Leave, and a “valid s11 Notice” under the Homelessness etc (Scotland) Act 2003. The Applicant was given until 10 October 2019 to provide these documents.
3. A response was received by email from the Applicant on 30 September 2019 with some details about alleged rent arrears and anti-social behaviour. No notice was provided in terms of the 2003 Act. The Applicant referred to a “notice” being provided but this was an email dated 4 July 2019 which gave “2 months notice as we agreed today”. The email made mention of rent needing to be paid but had no reference to any of the grounds for eviction from the Private Housing (Tenancies)(Scotland) Act 2016 nor specific details of the rent arrears. The email thus did not conform to the statutory style of a Notice to Leave in very many respects.
4. 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

5. 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.

6. 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.

7. 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.

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

a. Rule 109(b)(ii) as there is no Notice to Leave in terms of the 2016 Act; and

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

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 essential documentation, it cannot be accepted.

9. 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 apparent lack of a Notice to Leave having been provided in proper form, there would seem little utility in providing the Applicant with a further opportunity to provide documents simply for it to falter thereafter.

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.

J Conn

Legal Member/Chair

Date

16 October 2019