



**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

Case reference FTS/HPC/EV/23/0295

Parties

Ian & Sheena Graham Forbs (Applicant)

Mr David Meldrum (Respondent)

Kilglen Property Management (Applicant's Representative)

Block 3 Flat 4, Thistlebank, Bridge of Weir, Renfrewshire, PA11 3TA (House)

1. The application for an eviction order in terms of Rule 109 of the Procedural Rules was received by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) on 30.1.2023.
2. The documents lodged with the application were: a rent statement, a notice to leave with execution of service by sheriff officers, a S 11 notice which did not refer to proceedings under the Private Housing (Tenancies) (Scotland) Act 2016.
3. On 27.2.2023 the FTT wrote to the applicant requesting the following information:

“1. A copy of a corrected notice given to the local authority as required under section 56(1) of the 2016 Act 2 and evidence of service of the notice given to the local authority. The notice you have provided is incorrect and advises proceedings have been raised under the wrong legislation; 2. Please provide a copy of the tenancy agreement; 3. The Cost of Living (Tenant Protection)(Scotland) Act 2022 applies to your application for eviction. We have attached information on the options available to you and ask you to respond. Please reply to this office with the necessary information by 7 March 2023. “

4. On 6.3.2023 the Applicant’s representative re-sent the previously submitted S 11 notice together with an email sending same to the local authority on 31.1.2023 and provided a copy of the tenancy agreement.

DECISION

1. 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."

2. 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

Application for civil proceedings in relation to a private residential tenancy

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; 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

(c)be signed and dated by the landlord or a representative of the landlord.

REASONS FOR DECISION

1. S 56 of the 2016 Act specifically states "A landlord may not make an application to the First-tier Tribunal for an eviction order against the 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. 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. " The format and content of the S 11 notice is set out in the Notice to Local Authorities (Scotland) Regulations 2008 as amended. The Notice to Local Authorities (Scotland) Amendment Regulations 2017 specifically introduced the inclusion of a box referring to s 56 of the 2016 Act on the new form version. This was present on the form submitted by the Applicant.

2. As stated above, there are specific requirements to the form and type of information to be provided by the Applicant to the local authority to create a valid S 11 notice. In particular one piece of information is the court in which the application is to be raised, which information was not provided on the S 11 notice and the legislation under which the proceedings are taken. In this case the Applicant did not tick the box on the form which referred to S 56 of the Private Housing (Tenancies) (Scotland) Act 2016.
3. The Tribunal wrote to the Applicant to raise the issue of the content of the S 11 notice and gave the Applicant an opportunity to provide a complete and valid S 11 notice so the application could be accepted. The Applicant simply re-sent the S 11 notice previously produced although the Tribunal had clearly indicated that the information on the notice was incorrect.
4. Given the circumstances, the Tribunal considers that S 11 notice submitted was flawed and thus the required notice has not been provided and thus the requirement for a valid application to the FTT set out in S 56 of the 2016 Act has not been complied with. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. A correctly completed and valid notice was not provided.
5. The application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules at present. It would not be appropriate for the Tribunal to accept the application based on the documents available to date.
6. In terms of rule 5 (3) of the Rules of Procedure “the application is 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.” A valid S 11 notice has not been lodged to date. In terms of S 55(1) of the Private Housing (Tenancies) (Scotland) Act 2016 “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 six months period during which the Notice to Leave produced with the application could be used to constitute a valid application basis started on 10 September 2022 and expired on 10 March 2023. Unfortunately it is now no longer possible to give the Applicant further time to provide the necessary documents to complete the application as the period during which the Notice to Leave could be relied on has now expired.
7. The application it is therefore 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
21 March 2023