



**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

4 Houghton Square, Main Street, Alford AB33 8DW

Case Reference: FTS/HPC/EV/20/0994

Kerry Jane Stephen, St Mary's House, Auchterless, Turriff AB53 8BX ("the applicant")

**Ryan Colquhoun, 4 Houghton Square, Main Street, Alford AB33 8DW
("the respondent")**

1. On 20 March 2020 Stonehouse Lettings on behalf of the applicant lodged an application with the First tier Tribunal Housing and Property Chamber (the Tribunal). 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:- Tenancy Agreement, Notice to Leave with undated email to respondent, Notice to Local Authority with email to Aberdeenshire Council, email from Robert Stephen to Stonehouse Lettings of 14 December 2019. The documents referred to above are referred to for their terms and held to be incorporated herein.

2. The Landlord in terms of the Private Residential Tenancy agreement is Mrs. Kerry Jane Stephen. The owner of the property is Mrs. Kerry Jane Stephen. The applicant in terms of the Form E lodged on 20 March 2020 is Mrs. Kerry Jane Stephen.
3. The application contains the information that Mrs. Kerry Jane Stephen is the registered landlord under landlord registration 271636/100/14291. The landlord registration check shows that whilst the applicant is indeed a registered landlord, the property of 4 Haughton Square, Main Street, Alford does not show the applicant as the landlord registered for this property. It shows a Robert Stephen as the registered landlord.
4. The ground of eviction referred to in the Notice to Leave and the application is Ground 1 of Schedule 3 of the Act.

DECISION

5. 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."

6. 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

7. In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Act has to 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

8. In terms of Ground 1 Schedule 3 of the Act :Landlord intends to sell

1(1)It is an eviction ground that the landlord intends to sell the let property.

(2)The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

(a)is entitled to sell the let property, and

(b)intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

(3)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a)a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b)a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

9. I consider that the requirement in Rule 109 (b) i is only met if the evidence is supplied with the application to show that there is a genuine intention to sell. This should also be evidenced in part 3 of the Notice to Leave. The undated email sending the respondent the Notice to Leave states : “Good afternoon Unfortunately, the landlord is looking to take back possession of his property at 4 Haughton Place, Alford, AB33 8DW, by 11th March 2020. She has decided to sell and wanted to give you as much notice as possible. The Notice to Quit Paperwork has been posted out to you today and should reach you in due course.” In the Notice to Leave the Ground of Eviction in part 2 is left blank. In part 3 the ground is stated as “The Landlord intends to sell the property” and “We attach the following evidence to support the eviction action: The Landlord has advised by email, that she intends to sell the property.”

10. It is not clear from the documents submitted with the application whether or not any email was in fact attached to the Notice to Leave as evidence of the intention to sell. However, the email lodged with the application reads as follows: “From Robert Stephen Sent 14 December 2019 08:19 To jackie stewart Subject:Re:4 Haughton Place Hi Jackie, I think that I will look to sell it in the new year so please proceed with notice to quit. How long does that take? Thanks Robert. Robert Stephen Managing Director Celebrations Of Turriff 15 Main Street “

11. It is clear that this is not an email from the person who is the property , the landlord in the PRT document or the applicant. It is not an email which shows that the landlord, Mrs Kerry Jane Stephen, has instructed the agents to serve a Notice to Leave. It is simply from a different individual who is neither the landlord nor the owner of the property. The person who wrote the email is not entitled to sell the property as he is not the owner of the property. The email thus cannot show that the eviction ground is met.

12. Schedule 3 Ground 1 paragraph (3) (a) and (b) set out documents “tending to show” that the landlord has an intention to sell the property. Whilst the Tribunal acknowledges that these are not the only documents which may show such an intention, it provides guidance on what type of document would be required. An email from a third party in

their own name stating "I think that I will look to sell it" clearly is not such a document as it says nothing about the landlord's intention.

13. The requirement in Rule 109 (b) of the Procedure Rules has not been met.
14. Secondly I consider that the requirement in Rule 109 (b) ii is only met if the Notice to Leave is a valid Notice to Leave. As stated above under 9., the Notice to Leave is left blank in part 2 and it is not clear in part 3 whether any evidence has been attached.
15. The requirements for a valid Notice to Leave in terms of part 4 of the Notice to Leave are set out in S62 of the Act. S 62 1 (b) requires the Notice to specify the date on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the FTT. The date is to be calculated in accordance with S 62 (4), S 54 and S 62(5) of the Act. These are referred to for their terms.
16. In terms of S 54 (2) and (3) of the Act, for a Notice to Leave in regard to Ground 1 of Schedule 3 of the Act the notice period is 84 days. In terms of S 62 (4) of the Act, the day to be specified in accordance with S 62 (1) (b) of the Act is the day falling after the day on which the notice period defined in S 54 (2) of the Act will expire. S 62 (5) of the Act then states: *"For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent."*
17. It is no clear from the email lodged to the tenant on which day the Notice to Leave was sent. Thus it is not possible to establish if the date stated in Part 4 of the Notice to Leave states the correct date as the day on which the application can be lodged in terms of s 62(5) of the Act.
18. Whilst the Notice to Leave is dated 17 December 2019 it is not clear from the email sending it when the Notice to Leave was actually sent to the respondent and thus whether or not the necessary notice period has been given and whether the date of 12 March 2020 stated in part 4 is the correct date.

19. From the information provided it is not evidenced that the required requirement in Rule 109 (b) (ii) has been met.

20. The lodging requirements for an application under Rule 109 are therefor not met. The application was not validly made. The Tribunal cannot entertain 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.

P Hennig-McFatrige

Petra Hennig McFatrige
Legal Member
22 April 2020