

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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 Rules")

In connection with

23 St Catherines Road, Perth, PH1 5SA

Case Reference: FTS/HPC/EV/19/0793

Mr Amer Choudrey ("the Applicant")

Mr Tommy Ellison ("the Respondent")

On 12th March 2019 the Applicant lodged an application under Rule 109 seeking
eviction of the Respondent from the Property.

Lodged with the Application were:

1. Evidence showing eviction grounds have been met
2. Copy Notice To leave
3. Copy section 11 notice

The Tribunal wrote to the Applicant's representative on 23rd March 2019 requesting a copy of
the Tenancy Agreement and proof of service of the Notice to Leave. These were provided by
email on 25th March 2019.

On 9th April 2019 the Tribunal wrote to the Applicant's representative asking for clarification of how the Applicant had title to sue. This was answered by the Applicant's representative by email on 11th April 2019.

On 15th May 2019 the Tribunal wrote to the applicant's representative drawing their attention to the fact that it appeared that the wrong ground of eviction had been used in the Notice To Leave. It was suggested that if evidence in terms of the ground used could not be provided then the Applicant may wish to withdraw the application and serve a fresh Notice To Leave.

On 17th June 2019 the Applicant's representative provided the Tribunal with a fresh Notice To Leave, which was dated 17th May 2019 and stated that an application could not be submitted to the tribunal prior to 15th June 2019.

DECISION

I considered the application in terms of Rule 8 of the Chamber 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 and supporting documentation, I consider that the application should be rejected on the basis that it is not appropriate to accept it in terms of Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

The Notice to Leave states that an application cannot be submitted to the Tribunal for an eviction order before 15th June 2019. This application was lodged on 12th March 2019 and therefore falls to be rejected. The Applicant will require to lodge a fresh application.

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.

Ms Alison J Kelly

Miss Alison Kelly
Legal Member
1st July 2019

J