

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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

11 Linburn Place, Glasgow, G52 4EZ

**Case Reference: FTS/HPC/EV/19/1720**

**Ms Silvana Andreccetti ("the Applicant")**

**Miss Sharon Sinclair ("the Respondent")**

On 5<sup>th</sup> June 2019 the Applicant lodged an application under Rule 109 seeking eviction of the Respondent from the Property.

Lodged with the Application were:

1. Copy Tenancy Agreement
2. Notice To Leave
3. Sheriff Officers Certificate of Citation
4. Notice to Local Authority
5. Letter from Redgate Estate as Proof of landlord's intention to sell
6. Statement of rental to May 2019

The tenancy began on 8<sup>th</sup> December 2017. The Notice to Leave was dated 27<sup>th</sup> December 2018, and gave the date to leave as 24<sup>th</sup> March 2019. The grounds used in the Notice, in terms of Schedule 3 to the Private Housing (Tenancies)(Scotland) 2016 ( “the Act”), were ground 1, that the landlords intends to sell, and ground 12 , that the Respondent is in rent arrears over three consecutive months.

The Notice to Leave gave a period of 87 days. The Notice to Leave was served by Sheriff Officers on 31<sup>st</sup> December 2018, which meant it only gave the Respondents a period of 83 days.

The Tribunal wrote to the Applicant’s solicitor on 10<sup>th</sup> June 2019 pointing out that the Respondents had not been given the requisite 84 days’ notice. They were asked to clarify the basis upon which the Tribunal could proceed to consider the application.

The Applicants’ solicitor replied by email dated 18<sup>th</sup> June 2019. He stated that “in terms of Ground 12, noted on the application to the First-tier Tribunal, not less than 28 days’ notice is required for a notice to leave to be valid. Accordingly there is no impediment in the First tier tribunal proceeding.”

## **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**

Two separate grounds have been used in the Notice To Leave. If ground 12 had been the only ground used the Applicant's solicitor would be correct in his contention.

Section 54 of the Act states:

*54 Restriction on applying during the notice period*

*(1) 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 until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) 84 days after it begins if subsection (3) does not apply.*

*(3) This subsection applies if—*

*(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or*

*(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the tenant is not occupying the let property as the tenant's home,*

*(ii) that the tenant has failed to comply with an obligation under the tenancy,*

*(iii) that the tenant has been in rent arrears for three or more consecutive months,*

*(iv) that the tenant has a relevant conviction,*

*(v) that the tenant has engaged in relevant anti-social behaviour,*

*(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

*(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).*

Section 54(2) defines the appropriate notice period. In this case the Respondent has occupied the property for more than 6 months and is therefore entitled to 84 days' notice unless s54(b)(3) applies. Section 54(b)(3) makes reference to "the only eviction ground being one or more of the list following. There is more than one eviction ground in this case and therefore section 54(b)(3) does not apply. The correct period of notice is 84 days. 84 days' notice has not been given and therefore the application cannot proceed.

**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.

# Alison Kelly

Miss Alison Kelly  
Legal Member  
1<sup>st</sup> July 2019