



**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

11 Winton Avenue, Eaglesham, G76 0LE ("the property")

Case reference FTS/HPC/PR/21/1029

The parties:

Dr Michelle McAllister (" the applicant")

Mr Tom Higgins ("the respondent")

A BACKGROUND

1. On 30 April 2021 the applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the Tribunal) an application made under Rule 78 of the Procedural Rules. The application was made together with an application under rule 103 on a form, which was not one of the forms provided for applications on the Housing and Property Chamber website. The application under Rule 103 is considered separately from the application under Rule 78 and this decision only relates to the application under Rule 78.

2. The emails with the narrative provided by the applicant and the documents lodged are referred to for their terms and held to be incorporated herein.
3. On the page headed Claim number 78 the applicant appears to complain about the landlord entering the property with an architect and in her opinion breaching Covid guidelines.
4. There is no specification of the claim or how this might relate to an application under Rule 78 of the Rules of Procedure. Rule 78 deals with applications under S 21 of the Rent (Scotland) Act 1984
5. The applicant submitted with the application a copy of a tenancy agreement entered into between the parties on 1 February 2019, which is thus a tenancy agreement in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
6. The applicant further explained in the text of the application and appendices that the tenancy is ongoing although the landlord had advised her he is seeking to take back the property.

B 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.**

C RELEVANT LEGISLATION

Rule 78 of the Rules of Procedure reads as follows:

Application for compensation for misrepresentation or concealment by landlord

78. Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

(a)state—

(i)the name and address of the former tenant;

(ii)the name, address and profession of any representative of the former tenant; and

(iii)the name, address and registration number (if any) of the landlord;

(b)be accompanied by—

(i)evidence of misrepresentation on the part of the landlord; and

(ii)a copy of the order for possession; and

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

S 21 of the Rent (Scotland) Act 1984 reads as follows:

21 Compensation for misrepresentation or concealment in Cases 7 and 8.

Where, in such circumstances as are specified in Case 7 or Case 8 in Schedule 2 to this Act, a

landlord obtains an order for possession of a dwelling-house let on a protected tenancy or subject to a statutory tenancy and it is subsequently made to appear to the [F1First-tier Tribunal] that the order was obtained by misrepresentation or concealment of material facts, the [F1Tribunal] may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as a result of the order.

D REASONS FOR DECISION

1. The Application is made under Rule 78 and S 21 of the Rent (Scotland) Act 1984. Any case of such a nature must be made after the landlord has obtained an order for possession and Rule 78 requires that this is produced in evidence. The tenancy is clearly ongoing and no order for possession has been lodged as required in terms of S 21 and Rule 78 (b) (ii) of the Rules of Procedure. The application does not meet the lodging criteria of an application under Rule 78. It is also not possible to make an application under S 21 of the Rent (Scotland) Act 1984 for a tenancy which, by way of having commenced in 2019, is a tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.
2. It would not be appropriate for the Tribunal to accept an application that does not meet the lodging requirements of the Rule under which the application is being made. The application is thus 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
7 May 2021