



**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

Flat 1/2, 2 Broomhill Drive, Glasgow, G11 7AA

Case reference FTS/HPC/PR/21/1789

Parties

CLARKSTON DEVELOPMENTS LTD (Applicant)

Glasgow City Council (Respondent)

Mr Richard Thorburn (Applicant's Representative)

1. On 26 July 2021 an application under Rule 101 of the Rules of Procedure was received from the Applicant. Rule 101 relates to applications where a local authority makes a decision refusing to revoke a notice under section 95 (2) of the Antisocial Behaviour etc. (Scotland) Act 2004 (the 2004 Act) The following documents were ultimately lodged in connection with the application:- Application form G unsigned and undated, copy letter from Glasgow City Council dated 28 June 2021, rent penalty notice commencing on 5 July 2021. On the application form part 7 b was completed as follows: "see separate sheet attached". On the application form part 8 was completed as

follows: "see separate sheet attached". No separate sheets were attached.

2. The documents are referred to for their terms and held to be incorporated herein.

DECISION

3. 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."

4. 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.

REASONS FOR DECISION

Relevant Rules of Procedure:

Application to appeal against a decision of the local authority to serve a notice that no rent is payable

100. Where a relevant person on whom a notice under section 94 (circumstances in which no rent to be payable) of the 2004 Act is served makes an application under section 97(1) (appeals) of the 2004 Act, the application must—

(a)state—

(i)the name and address of the person;

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

(iii)the name and address of the local authority;

(b)be accompanied by a copy of the notification to the person who has the use as a dwelling of the house to which the notice relates as required under section 97(4) of the 2004 Act; and

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

Application to revoke a notice that no rent is payable

101. Where a local authority makes a decision refusing to revoke a notice under section 95(2) (notices under section 94: revocation) of the 2004 Act and a person having an interest makes an application under section 97(2) (appeals) of the 2004 Act, the application must—

(a)state—

(i)the name and address of the person;

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

(iii)the name and address of the local authority;

(b)be accompanied by a copy of the notification to the person who has the use as a dwelling of the house to which the notice relates as required under section 97(4) of the 2004 Act; and

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

Requirements for making an application

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be 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.

Relevant legislation

94Circumstances in which no rent to be payable

(1) Where a local authority is satisfied that the conditions in subsection (2) are met in relation to a house within its area, the authority may serve a notice under this section on the persons mentioned in subsection (5).

(2) Those conditions are—

(a) that the owner of the house is a relevant person;

(b) that the house is subject to—

(i) a lease; or

(ii) an occupancy arrangement,

by virtue of which an unconnected person may use the house as a dwelling;

(c) that the relevant person is not registered by the local authority; and

(d) that, having regard to all the circumstances relating to the relevant person, it is appropriate for a notice to be served under this section.

(3) Where a notice is served under this section, during the relevant period—

(a) no rent shall be payable under any lease or occupancy arrangement in respect of the house to which the notice relates;

(b) no other consideration shall be payable or exigible under any such lease or occupancy arrangement.

(4) A notice served under this section shall specify—

(a) the name of the relevant person to whom it relates;

(b) the address of the house to which it relates;

(c) the effect of subsection (3); and

(d) the date on which it takes effect (which must not be earlier than the day after the day on which it is served).

(5) Those persons are—

(a) the relevant person;

(b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in subsection (2)(b), the use of the house to which the notice relates, that person; and

(c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.

(6) If—

(a) the local authority is unable to identify the relevant person, it may serve the notice under this section by publishing it in two or more newspapers (of which one shall, if practicable, be a local newspaper) circulating in the locality of the house to which the notice relates;

(b) the local authority is aware of the relevant person's identity but is unable to ascertain the relevant person's current address, it may serve the notice under this section by serving it on the landlord—

(i) at the house to which the notice relates; and

(ii) if it is aware of a previous address of the relevant person, at that address.

(7) The condition mentioned in subsection (2)(c) shall not be taken to be met where—

(a) the relevant person has made an application under section 83 to the local authority in whose area the house is situated; but

(b) the application has not been determined under section 84 by the authority.

(8) Except as provided in subsection (3), nothing in this Part affects the validity of any lease or occupancy arrangement under which an unconnected person has the use as a dwelling of a house during the relevant period.

(9) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (5), failure to serve a notice on the person shall not affect the validity of the notice.

(10) In this section, "relevant period" means the period beginning with the date specified in the notice and ending with the earlier of—

(a) the revocation of the notice under section 95(2); or

(b) where the effect of the decision made on an appeal under section 97 is that rent or, as the case may be, other consideration is payable or exigible, that decision.

95 Notices under section 94: revocation

(1) Subsection (2) applies where a local authority serves a notice under section 94 in relation to a house.

(2) If (whether on the application of a person having an interest in the case or otherwise) the local authority which served the notice is satisfied that the conditions mentioned in section 94(2) are no longer met in relation to the house, the authority shall, with effect from such day as it may specify, revoke the notice.

(3) The revocation of a notice under subsection (2) shall not operate so as to make a person liable to pay any rent or other consideration in respect of the period during which the notice was in force.

97 Appeals

(1) A relevant person on whom a notice under section 94 is served may, before the expiry of the period of 21 days beginning with the date specified by virtue of subsection (4)(d) of that section in the notice, appeal to the **[F1 First-tier Tribunal]** against the decision of the local authority to serve the notice.

(2) Where, on the application of a person having an interest, a local authority makes a decision refusing to revoke a notice under section 95(2), the person may, before the expiry of the period of 21 days beginning with the day on which the decision is made, appeal to the **[F2 First-tier Tribunal]** against the decision.

(3) Subsection (4) applies where a person appeals against a decision such as is mentioned in subsection (1) or (2).

(4) The person shall (in addition to complying with any other requirements as to notification imposed by virtue of any enactment) give notice to the person who has the use as a dwelling of the house to which the notice relates (the "tenant") of such matters as may be prescribed by the Scottish Ministers by regulations.

(5) Regulations under subsection (4) may include provision for or in connection with—

(a) the form of the notice;

(b) the manner and timing of service of the notice.

(6) If a person fails to comply with subsection (4), the **[F3 tribunal]** hearing the appeal may not require the tenant to pay any sums that, but for the making of the **[F4 decision]**, would have been due by the tenant.

(7) The Scottish Ministers may by regulations make provision for or in connection with specifying other circumstances in which the **[F5 [F6 tribunal] hearing the appeal]** shall not require a tenant to pay any sums that, but for the making of the **[F7 decision]**, would have been due by the tenant.

(8) Regulations under subsection (7) may in particular include provision—

(a) specifying procedures;

(b) imposing obligations on landlords.

Reasons:

1. The application made by the Applicant on 26 July 2021 was incomplete. Rule 101 requires that an application is signed and dated. The application was not signed and dated.

2. Rule 101 requires that the application is accompanied by a copy of the notification to the person who has the use as a dwelling of the house to which the notice relates as required under section 97 (4) of the 2004 Act. This was not included.
3. It is further not clear if the correct Rule was used as there is no correspondence attached which would indicate that the Local Authority had refused to revoke the enclosed rent penalty notice. Rather it appears that the Appellant wished to appeal against the Rent Penalty Notice in terms of S 97 (1) of the 2004 Act. If so, this appeal in terms of S 97(1) of the 2004 Act should be made under Rule 100.
4. The Applicant did not complete parts 7 b and 8 of the application. The “separate sheet” referred to in the application were not lodged. Thus it is not possible to ascertain the precise nature of the appeal from the lodged documents.
5. However, even if the applicable rule was Rule 100, the application again would not meet the lodging requirements for that rule. Rule 100 also requires the application to be signed and dated, which it was not. Rule 100 further requires the application to be accompanied by a copy of the notification to the person who has the use as a dwelling of the house to which the notice relates as required under section 97 (4) of the 2004 Act. This was not lodged with the application.
6. If the application is an appeal against a rent penalty notice in terms of section 97 (1) of the 2004 Act, then it is also made out with the statutory time limit for such an appeal. The appeal period stated in section 97 (1) of the 2004 Act as “before the expiry of the period of 21 days beginning with the date specified by virtue of subsection (4) (d) of that section in the notice.”
7. The notice attached to the application specified as the relevant date 5 July 2021. The application was made on 26 July 2021.

8. It is the Tribunal's view that because of the wording of the appeal provision the calculation of the date would include the day on which it begins, being the 5th of July 2021. The 21 day period in terms of that method of calculation expired on 25 July 2021.
9. However, even if by way of an alternative consideration of the calculation of the period one was to exclude the date of 5th July 2021, the period would expire on 26 July 2021 and any appeal would have to have been made competently and in the complete format on that date.
10. In terms of Rule 5 (1) and (3) of the Rules of Procedure, an application is made either when it is lodged in accordance with the requirements or, if the Tribunal exercises its discretion to allow a period for lodging further documents to complete an incomplete application, on the day when all outstanding documents are received. In this case the Tribunal did not make a request for further documentation because even if it did so and requested further documentation, this would still mean that the application could not be competently completed within the period stated in section 97(1) of the 2004 Act because any further documents would be received out with the appeal period and thus not lead to a valid application being made within that period.
11. The application as it has been submitted is out of date, incomplete and does not meet the lodging requirements of the rule under which it was made or the rule under which it may have been made. It would not be appropriate for the Tribunal to accept the application in those circumstances.

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
5 August 2021