

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case reference FTS/HPC/EV/23/3847

Parties

Khanna Properties Limited (Applicant)
McTurk and Muir Lettings (Applicant’s Representative)
Sharon McCulloch (Respondent)

100 The Auld Road, Cumbernauld, G67 2RH (the Property)

Legal Member

Ruth O’Hare, with delegated powers from the Chamber President

1. This application was made under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. The application was incomplete. On 21st November 2023 the Tribunal wrote to the Applicant’s representative in the following terms:-

“Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:

1. *You have given an excessive period of notice in the Notice to Leave. Ground 12 requires 28 days notice, plus 48 hours for service. Please consider whether the excessive period of notice invalidates the Notice to Leave and provide your representations in this regard.*
2. *You have not provided any evidence of service of the Notice to Leave upon the Respondents. If the application is to proceed, we would require to see evidence of service by an acceptable method showing the date of service. If, for instance, service was carried out by recorded delivery, we would expect to see the posting receipt and tracking information showing receipt.*
3. *You have not provided a section 11 notice with evidence of service upon the local authority. This is required before an application can be accepted.*

4. *We would require a rent statement showing rent due, rent paid and a running total of rent arrears.*
5. *The landlord registration is not in the name of the Applicant. Please provide an explanation and any evidence of landlord registration.*
6. *The tenancy agreement and Title Deed are not in the name of the Applicant company, but in the name of Mr Khanna as an individual. It is not clear why the Applicant is not Mr Khanna.*
7. *You have not provided a mandate from the Applicant authorising you to make the application on their behalf.*
8. *You have not provided any evidence of compliance with the pre-action protocol.*

Please reply to this office with the necessary information by 5 December 2023. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Tribunal received no response from the Applicant’s representative, nor from the Applicant directly.

Decision

4. The circumstances in which an application is to be rejected are governed by 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."

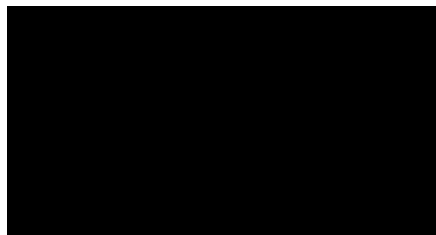
5. After consideration of the application, the further information referred to and the lack of correspondence from the Applicant or the Applicant's agent, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

Reasons for Decision

6. The Applicant was given the opportunity to provide further information by way of the request from the Tribunal on 21st November 2023. As at the date of this decision there has been no response from the Applicant. This additional information requested was necessary to allow the application to proceed. The Applicant was warned that failure to respond may lead to the application being rejected. In the absence of any response from the Applicant it would not be appropriate to accept the application and it should therefore be rejected.

NOTE: What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: An Applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Ruth O'Hare, Legal Member

4 January 2024