



**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

**107 Barrie Terrace, Ardrossan, KA22 8AZ (the property)**

Case reference FTS/HPC/EV/21/1888

**Parties**

**AJ Ayrshire Properties Ltd (Applicant)**

**Miss Angela Martin (Respondent)**

On 9 August 2021 an application dated 09/01/21 was received by the First-tier Tribunal (the Tribunal). The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). There were no enclosures with the initial application.

1. On 24 August 2021 the Tribunal (the Tribunal) asked the Applicant for the following further information and documentation: " Before a decision can be made, we need you to provide us with the following: 1. *Please provide a copy of the tenancy agreement.* 2. *Please provide a copy of the notice to leave and evidence of service.* 3. *Please provide a section 11 notice served on the local authority and evidence of service.* 4. *Please clarify the ground that you are relying on Ground 1 refers to intention to sell; ground 5 refers to a*

*family member intending to live in the property. The application refers to "Ground 1a family member moving into the property" Please clarify and amend the application. 5. Please provide evidence of the ground that you are relying on, for example an affidavit confirming who is move into the property and why; or evidence that you are selling the property for example a contract between you and your estate agent. 6. The title deeds show the owner of the property is A J AYRSHIRE PROPERTIES LIMITED, the applicant is Andrew Jackson, please explain the applicant's right title and interest to bring these proceedings. Please reply to this office with the necessary information by 7 September 2021. If we do not hear from you within this time, the President may decide to reject the application."*

2. Later that day the Applicant provided a copy of the tenancy agreement showing this to be a Private Residential Tenancy Agreement with the landlord stated as Andrew Jackson acting for AJ Ayrshire Properties Ltd. He also submitted a copy of the Notice to Leave stating Ground 5 of schedule 1 of the 2016 Act as the ground for eviction together with the email sending same to the Respondent on 10 May 2021, the S 11 notice and service evidence, an explanation that Andrew Jackson is a director of AJ Ayrshire Properties Ltd., an amended application showing as the applicant now AJ Ayrshire Properties Ltd. with the name Andrew Jackson below this and a typed letter of a Jacqueline Jackson without personal signature in the following terms : *"Tuesday 24th August 2021 To whom it may concern, I Jacqueline Jackson can confirm im waiting on a property to become vacant so i can relocate back to Ayrshire Scotland. The reason i want to move back to Scotland is to look after family and be closer to friends. Andrew will be my landlord. Regards Jacqueline Jackson."*
3. On 3 September 2021 the Tribunal again wrote again in the following terms: *"1.As the owner and landlord of the property is AJ Ayrshire Properties Ltd, a limited company which is a separate legal entity from its directors, please clarify the basis upon which the Applicant can rely on ground 5. A limited company does not have "family members" as defined by paragraph 5 of Schedule 3 of the 2016 Act. 2.The letter from Jacqueline Jackson does not identify the property or confirm it is her intention to reside there. If the application is proceeding on this ground, please provide evidence of the eviction ground"*
4. No reply has been received to date.
5. On 13 October 2021 the Tribunal again wrote to the Applicant as follows: *" I refer to your recent application which has been referred to the Chamber President for consideration.*

*Before a decision can be made, we need you to provide us with the following: We refer to our letter of 3rd September to which you have not responded and enclose another copy of our letter and would advise that we require a response to this to enable us to determine if your application is able to proceed. Please let us have your response within 14 days failing which your application may have to be rejected. Please reply to this office with the necessary information by 27 October 2021. If we do not hear from you within this time, the President may decide to reject the application."*

6. No reply has been received to date.
7. The documents referred to above are referred to for their terms and held to be incorporated herein.

## **DECISION**

8. 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."*

9. 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.

## **RELEVANT LEGISLATION:**

Rules of Procedure:

### **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.

### **Application for an eviction order**

**109.** Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a) state—

- (i) the name, address and registration number (if any) of the landlord;
- (ii) the name, address and profession of any representative of the landlord;
- (iii) the name and address of the tenant **[F72(if known)]**; and
- (iv) the ground or grounds for eviction;

(b) be accompanied by—

- (i) evidence showing that the eviction ground or grounds has been met;
- (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

**[F73]** (iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

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

**Ground 5 schedule 1 of the 2016 Act: Family member intends to live in property**

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph

(2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in subparagraph (2) includes (for example) an affidavit stating that the person has that intention.

## **REASONS FOR DECISION**

[1] In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) has to be accompanied by:

- i. evidence showing that the eviction ground or grounds has been met
- ii. a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act
- iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act. These requirements reflect the requirements stated in the 2016 Act.

[2] The Applicant in this case is a limited company, AJ Ayrshire Properties Ltd., which is also listed in the title deeds as the sole owner of the property. AJ Ayrshire Properties Ltd. is described in the title deeds as “ a company incorporated under the Companies Act (Company Number SC607003) and having their Registered Office at 24 Priesthill View, Stevenston, KA20 4AT”. Whilst a limited company can be landlord and owner of a property, ground 5 relies on there being a qualifying family relationship between a landlord of a property and a family member wishing to move into the said property. Schedule 3 ground 5 makes no reference to the family relationship applying to company directors. The landlord in the case is a limited company, which by its very nature does not have qualifying family members. The Tribunal advised the Applicant on 3 occasions that it was not clear how the ground stated in the application, ground 5 could possibly be relevant to an eviction action raised by a limited company, because it is a separate legal entity from the individuals who may be company directors. The Applicant was given every opportunity to make representations and to state on what legal basis he considered that a company could invoke ground 5. The Applicant did not make such representations.

[3] The Applicant has also not provided any documentary evidence that anyone at all intended to move into the property. The letter of 24 August 2021 from a Jacqueline Jackson does not refer to her intending to move into the property and does not set out in what way

the person writing it may be a qualifying relative to the landlord in the case. The lodging requirement of rule 109 (b) (i) is still not met.

[4] The Applicant has not provided the necessary information after several letters from the Tribunal. The Tribunal considers that taking into account all available information the Applicant has provided there is no evidence that the ground is met and thus the application continues to be incomplete. The Applicant has not co-operated with the Tribunal's requests for further information.

[5] It would not be appropriate for the Tribunal to accept the an incomplete application and it would not be appropriate to accept an application in circumstances where the Applicant has refused to co-operate with the Tribunal in the further processing of the application. The application is 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  
16 November 2021