



**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

Case reference FTS/HPC/EV/23/0380

Parties

Mr Sahara Chowdhury (Applicant)

Mr Allan Tyrie (Respondent)

2/2 Westfield Road, Edinburgh, EH11 2QR (House)

1. The application for an eviction order in terms of Rule 109 of the Procedural Rules was received by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) on 7.2.2023.
2. The documents lodged with the application were: a copy of the Respondent’s passport, a rent statement.
3. On 8.2.2023 the FTT wrote to the applicant requesting the following information by 15.2.2023: “The following further information is required from you before your application can proceed to the Chamber President for consideration: • a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; •

evidence of the notice to leave given to the tenancy as required under section 52 (3) of the 2016 Act being served by the landlord on the tenant • a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act • evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority Please reply to this office with the necessary information by 15 February 2023, otherwise the application may be rejected."

4. As of 8.3.2023 no reply has been received and no further documents have been lodged.

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.

Relevant Legislation

Application for civil proceedings in relation to a private residential tenancy

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; 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

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

REASONS FOR DECISION

1. S 56 of the 2016 Act specifically states “A landlord may not make an application to the First-tier Tribunal for an eviction order against the tenant unless the landlord has given notice of the landlord’s intention to do so to the local authority in whose area the let property is situated. Notice under subsection (1) is to be given in the manner and form prescribed under section 11 (3) of the Homelessness etc. (Scotland) Act 2003. “The required notice has not been provided and thus the requirement for a valid application to the FTT set out in S 56 of the 2016 Act has not been complied with. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. This was not provided.
2. No notice to leave was submitted. Thus the application does not meet the lodging requirement in terms of rule 109 (b) (ii) of the Procedure Rules.
3. The FTT had given the applicant the opportunity to lodge the missing documents. These have not been lodged.
4. Given that the application does not fulfil the lodging criteria for an application of that

nature in terms of Rule 109 of the Procedure Rules, it would not be appropriate for the Tribunal to accept the application.

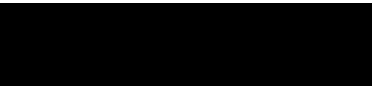
5. The application it is therefore rejected.

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
8 March 2023