



**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 3/1, 16 Appin Rd, Glasgow, G31 3PD (the property)**

**Case Reference: FTS/HPC/EV/22/0269**

**Parties**

**Mr Simon Beggs (Applicant)**

**Mr Mark Wright (Respondent)**

1. On 28 January 2022 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules and stated as the grounds applicable grounds 8, 11, 14 and 15.
2. Appended to the application was an AT6 document dated 5 January 2022 stating as the ground for the notice ground 8 and stating proceedings would not be raised before 18 January 2022, a Private Residential Tenancy Agreement between the parties over the property commencing 6 June 2020 and a letter to the respondent dated 3 December 2021.
3. In letters dated 1 February 2022, 21 February 2022 and 22 March 2022 the FTT requested further information from the applicant, in particular a copy of the S 11

notice, a Notice to Leave and evidence of the grounds stated. The FTT pointed out that the grounds appeared to be grounds stated in schedule 5 of the Housing (Scotland) Act 1988 and not in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and the applicant lodged an amended application on 5 March 2022 amending the grounds to 11, 12 and 14.

4. The FTT had advised the applicant in the letters of 21 February 2022 and 22 March 2022 that the AT6 notice lodged with the application is a document which is not relevant to applications under the Private Housing (Tenancies) (Scotland) Act 2016.
5. Despite this the applicant stated that he had been told that an AT6 notice was the appropriate notice and that he did not require a S 11 notice. He had thus not provided this and had only served the AT6 notice.
6. The documents lodged by the applicant and the letters requesting further information from the FTT are referred to for their terms and held to be incorporated herein.

## **DECISION**

7. 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."*

- 8. 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**

1. For the sake of completeness the FTT would point out that the appellant at no point provided documentary evidence of the grounds stated in the original and in the amended application, including a rent statement.
2. However, regardless of the further content of the application, the application does not meet the lodging requirements of either an application under rule 65 or under rule 109 as both types of applications require the lodging of a S 11 Notice to the local authority, which has not been provided.
3. The applicant has not explained on what basis the AT6 document would be an appropriate method of giving notice for a tenancy which had commenced on 6 June 2020 and thus at a time when the Private Housing (Tenancies) (Scotland) Act 2016 was in force.
4. The documents required in terms of rule 109 (b) ii and iii were not provided, despite the FTT having requested these on 3 occasions. S 52 of the Private Housing (Tenancies) (Scotland) Act 2016 states that an application for an eviction order must be accompanied by a copy of a notice to leave which has been given to the tenant. This was not provided. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a 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 and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. This had not been lodged.

5. The applicant is not arguing that the application relates to an assured tenancy and given the date of the commencement of the tenancy this appears to clearly not be the case. However, even if one were to consider this might be the case because the applicant had served an AT6 document and initially quoted grounds from the Housing (Scotland) Act 1988, the documents required for an application under rule 65 were not provided either. Whilst an AT6 document was provided, no S 11 notice was lodged. S 19A of the Housing (Scotland) Act 1988 requires this for proceedings for possession.
6. Because the documents necessary to lodge an application in terms of rules 109 or 65 were not met, it would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements.
7. The applicant had been given 3 opportunities to lodge the missing documents and provide further details and has failed to do so.
8. The application is accordingly 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  
11 April 2022