



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

12 Blackthorn Avenue, Beith, North Ayrshire, KA15 2AR ("the property")

Case Reference: FTS/HPC/CV/20/0153

**James Stuart, Auchenblae, Newbigging Road, Dunsyre, ML11 8NQ ("the
Applicant")**

**Angela Ferguson 12 Blackthorn Avenue, Beith, North Ayrshire, KA 15 2AR ("the
Respondent")**

1. By application received on 16 January 2020 the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51 Private Housing (Tenancies) (Scotland) Act 2016. The eviction grounds stated in the application are rent arrears and breach of tenancy. A rent statement was lodged with the application indicating that there are arrears of rent in the sum of £665.28.
2. On 20 January 2020 the Tribunal issued a letter to the Applicant advising that the application was incomplete and that the Applicant had to submit a copy of the Notice to leave issued to the Respondent, a copy of the Section 11 Notice sent to the Local Authority and a copy of the tenancy agreement. On 22 January 2020 the Applicant replied by email stating that the Notice to Leave had been hand delivered to the Respondent. He did not provide a copy of the Notice or specify the date it had been given to the Respondent. He also submitted a document which appeared to be part of a tenancy agreement

(pages 1 to 6 of 13). The document is incomplete and unsigned. A further letter was issued to the Applicant by email on 11 February 2020 directing the Applicant to provide the documentation previously requested and a full copy of the tenancy agreement by 25 February 2020 or the application may be rejected. On 9 March 2020 two further emails were received from the Applicant. The first asked for all future communication to be made by post. The second advised that an email had been sent to the Local Authority regarding the eviction. A copy Section 11 Notice was not attached to the email. On 9 March 2020 a letter was issued to the Applicant by recorded delivery post. The letter enclosed copies of all previous requests for further information and directed the Applicant to provide the documents requested by 23 March 2020, failing which the application may be rejected. No response has been received.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules. That Rule provides:-

“(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 lodgment 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 requirement manner for lodgment. “

- 4. After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5.**

Reasons for Decision

5. The Applicant submitted an application for an eviction order in terms of Rule 109 of the Procedural Rules. This Rule states that the application must “(b) be accompanied by – (i) evidence showing that the eviction ground 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. “. The Applicant failed to submit a copy of the Notice to Leave or the Notice to the local Authority. On 20 and 27 January, 11 February and 9 March 2020 the Tribunal wrote to or emailed the Applicant directing the Applicant to lodge the required documents. The Applicant has failed to provide them.
6. As the Applicant has failed to provide the documents required in terms of Rule 109 of the Rules and has failed to submit the documents, having been directed to do so in a request for further information by the Tribunal in terms of Rule 5(3) of the Rules, the Legal Member determines that the application cannot be accepted. The application is rejected on that basis.

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.

Josephine Bonnar
Legal Member
6 July 2020