



**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/21/2129

**Parties**

**Mrs Bernadette McPake, Mr Peter McPake (Applicant)**

**Mr William Davies, Mrs Margaret Davies (Respondent)**

**Property Angels Letting & Management Ltd (Applicant's Representative)**

**22 Anderson Street, Hamilton, ML3 0QN (House)**

**PROCEDURAL BACKGROUND:**

1. The application 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) was made on 3 September 2021.
2. The following documents were ultimately lodged in connection with the application:- S

- 11 Notice to Local Authority with service email of 8.2.2021, Notice to Leave dated 5.2.2021 to 8.8.2021 with confirmation of service email on 8.2.2021, Copy Private Rented Tenancy Agreement unsigned with start date 6 November 2020, 3 documents headed Short Assured Tenancy for the periods of 6.11.2015 to 5.5.2016, 20.5.2016 to 19.11.2016 and 6.11.2016 to 5.11.2017, letter from Property Angels to the Applicant confirming instruction for sale of the property, landlord registration confirmation for both Applicants.
3. The PRT between the parties allegedly commenced on 6.11.2020. The ground of eviction stated is "your landlord intends to sell the property".
  4. The First-tier Tribunal (FTT) wrote to the Applicants' representative on 20.9.2021, 8.11.2021, 25.11.2021, 14.12.2021, 11.1.2022 and 28.1.2022. Essentially the FTT was asking the Applicants to provide evidence that the tenancy in question was a Private Residential Tenancy (PRT) because the document was unsigned and there were signed copies of previous Short Assured Tenancy documents which showed that the Respondents had been the tenants of the property with the Applicants as landlords since 2015. This was also stated in the S 11 Notice to the Local Authority.
  5. The Applicant sent further replies in answer to the above correspondent on 11.10.2021, 8.11.2021, 2.12.2021, 22.12.2021 and 11.1.2021.
  6. On the occasions state above the FTT asked the Applicants to explain how and when the previous assured tenancies entered into by the parties in 2015 and 2016 for the property converted with the consent of both parties to a PRT in terms of the 2016 Act. The answer provided by the Applicants' representative were respectively:
    - a. 8.10.2021: Tenant was on a short assured lease , that changed to PRT just before Covid 19 the tenant didn't sign this lease as they were both shielding;
    - b. 8.11.2021: The tenant wont sign the PRT lease he was asked to sign this at the time , but then covid / lock down happened and he wont sign this;
    - c. 30.11.2021: The tenants moved into the property on the 6th November 2015 the tenants were given notice on January 2021 , and told the landlord had health issues and that he was going to sell the property I told the tenants that if I had any properties , I would give them first refusal , which I did however the tenant wants a council property and he has been told by South Lanarkshire council that he needs a date from yourselves and they will offer him a property **the**

**original lease was a short assured , however I thought that all tenants had to be moved to a PRT as the short assured were no longer valid I replaced the old lease back on 6th November 2020 , however this was not signed due to Covid and lock down, when sending the notice to the tenant , the PRT lease was in the file and the paper work was done on a PRT** Please see the PRT lease , also the Short assured , to save on paper work we printed only a few pages for the file the tenant got the whole lease;

- d. 22.12.2021 a further production of the lease documents.
  - e. 11.1.2022: Good afternoon can you please advise, the tenant didn't come in to sign the new PRT lease , then we had covid and lock down , after this the tenant was shielding due to health issues , he is keen to move out the property as the Landlord wants to sell , however the council will only offer him a house for his family when you give him a date for a hearing , if he signs now before the 25th Jan , on a new PRT lease can you take this ?
7. There was no reply to the last correspondence from the FTT on 28.1.2022
8. The documents are referred to for their terms and held to be incorporated herein.

## DECISION

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."*

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:**

### **Applicable Legislation:**

#### **Private Housing (Tenancies) (Scotland) Act 2016**

##### **1 Meaning of private residential tenancy**

(1) A tenancy is a private residential tenancy where—

- (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,
- (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
- (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

##### *Tenancies under previous legislation*

21 A tenancy cannot be a private residential tenancy if it is—

- (a) a protected tenancy within the meaning of the Rent (Scotland) Act 1984,
- (b) a tenancy to which Part VI of that Act applies,
- (c) a Part VII contract under that Act, or
- (d) an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.

##### **55 Restriction on applying 6 months after the notice period expires**

(1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2)In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3)The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

### **Housing (Scotland) Act 1988:**

#### **46AChange to private residential tenancy by agreement**

(1)The landlord and the tenant under an assured tenancy may agree that on a day specified by them, the tenancy will cease to be an assured tenancy.

(2)On the day specified by the landlord and the tenant under subsection (1), the tenancy—

(a)ceases to be an assured tenancy, and

(b)becomes a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

(3)But an agreement under subsection (1) is of no effect if, for a reason other than the tenancy being an assured tenancy, it is one which schedule 1 of the 2016 Act states cannot be a private residential tenancy.

### **Findings and Reasons:**

1. The Applicants seek an order under S 51 of the Act and made the application under Rule 109 of the Rules of Procedure. The FTT had queried on several occasions how the assured tenancy between the parties had been validly converted to a PRT and had copied the wording of S 46A of the Housing (Scotland) Act 1988 to the Applicants’ representatives to clarify that their assumption stated in the email of 30.11.2021 and highlighted in bold in para 6 c above was not correct. The FTT asked repeatedly for clarification when and how the tenants had given consent to the conversion of the assured tenancy to a PRT, as this would be required to change the nature of the tenancy in terms of S 46A of the Housing (Scotland) Act 1988. The Applicants’ representative provided no details about when and how this would have been agreed and only mentioned a potential agreement of the tenants in January 2022, which post dates the Notice to Leave and could not now retrospectively create a valid PRT with a start date of 6.11.2020. The indication given in the emails setting out the circumstances of the

production of the PRT document show that the tenants had not given written or verbal consent and had in fact refused to sign the PRT document sent to them. The FTT gave the Applicants' repeated opportunity to clarify and evidence the circumstances of a legal conversion to a PRT, which would be necessary to show that the tenancy was a PRT and not an assured tenancy and that thus the application could be made under S 51 of the 2016 Act to the FTT. As no such evidence has been provided, the Applicants' have not shown that the relevant tenancy is a PRT. All information provided shows that the existing tenancy under the Housing (Scotland) Act 1988 had not been changed with the agreement of the tenants but that the Applicants' agent had assumed, wrongly, that all tenancies of that nature had to be changed to tenancies under the 2016 Act and had thus unilaterally issued a new tenancy agreement in the form of a PRT, which was then not accepted and signed by the existing tenants. The tenancy which has been evidenced is an assured tenancy between the parties which has continued since 2015.

2. The application must be rejected in terms of Rule 8 as it would not be appropriate to accept an application under Rule 109 and s 51 of the 2016 Act which did not relate to a PRT.
3. Furthermore, it is the responsibility of Applicants to ensure that all documents and evidence necessary to make a valid application are submitted. In terms of Rule 5 (3) of the Rules of Procedure an application is held to be made on the date that the FTT receives the last of any outstanding documents necessary to meet the required manner for lodgment. Although an unsigned PRT had been lodged in evidence, the FTT required evidence that the conversion to a PRT had been agreed by the Respondents. This could have taken various forms but no written confirmation and no evidence showing that this had been agreed between the parties on or before the alleged start of the PRT on 6 November 2020 had been produced. Thus documentation required in terms of Rule 5 (3) of the Rules of Procedure to evidence that the relevant tenancy is a PRT and not an assured tenancy is still outstanding at this stage. The Applicants' representative had not used the opportunity to produce the requested documentation and had not replied at all to the last correspondence of the FTT on 28.1.2022. To date the application is thus not properly made. A Notice to Leave was given to the Respondents on 8.2.2021 by email and expired in terms of the document on 8.8.2021. Given the wording of S 62 (5) of the Act, the receipt date of the notice would be deemed to be 10.2.2021 and thus

the date to be stated on the Notice to Leave part 4 should have correctly been stated as 11.8.2021. In terms of para 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 the Tribunal can consider the date as if this was stated correctly and use the actual end date as the correct end of the notice period. However, due to the passage of time, even if further evidence was now produced, it would now no longer be possible to make the application under S 51 of the Act within the period stated in S 55 (1) of the 2016 Act. Even taking the actual expiry date of any Notice to Leave sent on the relevant day by email for the reason of eviction stated being ground 1, the 6 months period after expiry of any such notice would now have itself expired.

#### **4. For the above reasons the application has to be 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  
4 March 2022