



**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/22/4079

**Parties**

**Mrs Alison Maitland (Applicant)**

**Mr Stuart Malcolm (Respondent)**

**GF Left 13 Barassie Street, Troon, South Ayrshire, KA10 6LU (House)**

1. On 9.11.22 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable grounds 10 and 11 of schedule 3 of the 2016 Act, namely that the tenant no longer resides at the property and that he has breached the terms of the tenancy agreement. The application was accompanied by a copy of a Notice to leave dated 4.10.22 under the same grounds and pages 5, 22 and 23 of the Tenancy Agreement.
2. The application was not accompanied by a S 11 notice, no evidence of the

abandonment of the tenancy property was provided and the tenancy agreement was only produced in part.

3. In letters dated 7.12.22, 5.1.23, 6.2.23, 7.3.23 and finally 28.4.23 the FTT requested further information from the Applicant, in particular the current address of the Respondent, a full copy of the tenancy agreement, the S 11 notice including the required information, evidence of the notice to leave having been validly served and representations as to the calculation of the date of 3.11.22 entered in part 4 of the notice to leave. The date for a reply stated in the last letter of the FTT was 5.5.23. No reply has been received to this last request. Previous replies to letters from the FTT did result in the clarification that the notice to leave had been hand delivered to the property the tenant had allegedly left but no documentation verifying this, that a text message had been sent to the tenant advising him the notice to leave had been delivered to the property, a further document with all even pages of the tenancy agreement but without the odd pages and some photographs showing the state of the property at inspection. The Applicant made various negative comments on the lack of progress of the application but did not provide all the information requested by the FTT. The last communication from the Applicant had been received on 7.2.23 stating in particular “ I have provided you with all the proof and information you need to progress. Whether you provide the eviction paperwork or not, Mr Malcolm’s stuff will be out of my property by the end of the month. I will be more than happy to highlight how poor this department operates if this goes further.” Unfortunately neither this nor any other communication from the Applicant provided the current address of the Respondent, the missing S 11 notice and proof of service, the full tenancy agreement and documentation proving the delivery of the notice to leave to the Respondent despite the Applicant stating previously this had been carried out in front of a witness.
4. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

5. 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."*

- 6. 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. The lodging requirements for an application under rule 109 (a) require the Applicant to provide the address of the Respondent and under (b) include the requirement to lodge (i) evidence that the 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 under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act

2. The Applicant has not provided an up to date address for the Respondent. She had been advised repeatedly to do so or to apply for service by advertisement. The Applicant did not apply for service by advertisement. She also states that the Respondent is definitely no longer residing at the address stated on the application.
3. S 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. In order to establish whether the notice to leave was validly served the FTT had requested further information but this was not forthcoming. The text message referred to by the Applicant which informed the Respondent of the Notice to leave is not a valid form of service of a Notice to leave. No documentary evidence showing the delivery of the Notice to leave has been submitted. It is also clear that the Notice to leave was not given to the tenant in person but at best left at the property, which the Applicant states the Respondent was no longer living at and no proof of said delivery was provided.
4. 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. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents.
5. Despite requests to produce the necessary documents and to provide an address for the Respondent or a service by advertisement application, these documents still have not been produced.
6. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
7. Finally, since the Applicant has stopped communicating with the Tribunal on 7.2.23 and stated categorically that regardless of the further process she would be emptying the property. She has not replied to the letters from the FTT in March and April 2023 despite the statement by the FTT that this would result in a rejection of the application. It appears from these circumstances that the Applicant no longer has the intention to follow through with the eviction process and is thus no longer pursuing the application.
8. The application is thus 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-McFatrige**

6 June 2023