



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

8F Morgan Street, Dundee, DD4 6QF ("the Property")

Case Reference: FTS/HPC/EV/20/1076

Mr John Nicol, 8 Wallacetown Court, Dundee, DD4 6RP ("the Applicant")

Mr Stevie Johnstone, 8F Morgan Street, Dundee, DD4 6QF ("the Respondent")

DECISION

**It was determined by the Legal Member acting under the delegated powers of the
Chamber President, in terms of 8 of the 2017 Rules that there was a good reason
to believe that it would not be appropriate to accept the Application within
the meaning of Rule 8(1)(c) of the Procedural Rules, therefore the Application must be
rejected in terms of Rule 8(1).**

REASONS

1. On 15 April 2020, an application dated 30 March 2020 was received from the Applicant ("the Application"). The Application was made under Rule 109 of the 2017 Rules, being an application for an order for eviction under section 51(1) of the Private Housing (Tenancies) Scotland Act 2016 ("the 2016 Act").
2. An application made in terms of Rule 109 and Section 51(1) of the 2016 Act 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 (if known); and
- (iv) the 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
- (iv) A copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable); and

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

3. The Applicant submitted an incomplete Application Form as the Applicant did not supply all of the required information. The Application was not accompanied by all of the required documents.
4. On 5 May 2020, the Application paperwork was considered by a legal member of the tribunal with delegated powers of the Chamber President. The legal member determined, in terms of Rule 5 of the 2017 Rules, that the Application had not been lodged in the manner set out in Rule 67 of the 2017 Rules. The legal member requested further documents from the Applicant in accordance with Rule 5(3) of the 2017 Rules.
5. By letter of 6 May 2020, the Tribunal informed the Applicant that the following further information was required from him before the Application can proceed to the Chamber President for consideration:

“The application as it has been lodged is incomplete. Rule 109 of the Rules of Procedure states that any application for eviction has to (a) (iv) state the ground of eviction and has to be accompanied by (b) (i) evidence showing that the eviction ground has been met.

It also has to be accompanied (b)(ii) by a Notice to Leave.

The application at present does not state in part 5 under which of the statutory grounds of eviction the application is made and does not provide any evidence for any ground. With regard to the Notice to Leave the application does not include proof of service, which is required to allow the Tribunal to determine whether or not the date on the Notice to Leave has been calculated correctly in terms of S 62 (5) of the Private Housing (Tenancies) (Scotland) Act 2016.

If you wish the application to be considered for acceptance you must provide the documents required .

Please provide the following within 14 days:

State on which ground or grounds you are making the application in part 5

Provide evidence that the ground or grounds are met and enclose the relevant documents (part 6)

Provide information and evidence regarding the method and date of sending the Notice to Leave (how was it served, when was it sent)

Provide your calculation of the date of 30 March 2020 entered in part 4 of the Notice to Leave.

Provide information and evidence regarding the method and date of sending the S 11 notice to the Council

6. The Applicant was asked to reply to the tribunal's office with the necessary information by 20 May 2020, otherwise the Application may be rejected.
7. On 17 May 2020, the Applicant replied by email, acknowledging the tribunal's request for further information producing a Section 11 notice and a set of photographic images. The Applicant did not provide the required information within the time stipulated.
8. On 22 May 2020 the Applicant sent an email to the tribunal which was not a response to the further information request, in which it was stated that he had been advised that there had been a fire at the Property.
9. On 2 June 2020, the Application paperwork was considered by a Legal member with delegated powers of the Chamber President. On 2 June 2020, the Tribunal informed the Applicant that the following further information was required from him before the Application can proceed to the Chamber President for consideration, as follows:

Before a decision can be made, we need you to provide us with the following:

- *In the Notice to Leave you state that the tenant has occupied the property since 2012 but that a new private residential tenancy agreement was issued in July 2019. The document lodged is unsigned. In order to establish that the previous assured tenancy has been replaced by a private residential tenancy please provide a signed version of the agreement or other evidence that the new agreement has superseded the previous one.*
- *The date specified in the Notice appears to be inaccurate. The date appears to be the day that the notice period expired rather than the day following expiry of the notice period. Please clarify the basis upon which the Tribunal can consider the application*

*Please reply to this office with the necessary information by **16 June 2020**. If we do not hear from you within this time, the President may decide to reject the application.”*

10. On 15 June 2020, the Applicant provided a response to the further information request, in which he stated how he had calculated the notice period; and provided information in relation to rent arrears (which was not relevant to the grounds in the Notice to Leave).
11. On 1 July 2020, the Application was considered by the Chamber President. On 1 July 2020, a further letter was sent to the Applicant, as follows:

“Before a decision can be made, we need you to provide us with the following:

1. *The date which has been specified in the Notice to leave is not correct. As stated in the Notice, this requires to be the day after expiry of the notice period. It should therefore be 31 March 2020. As a result the notice is invalid and the application could be rejected. Furthermore, you have not provided any evidence to support this eviction ground.*

2. *The 12 week notice period relates only to ground 4 (landlord intends to refurbish) and not ground 11 (breach of tenancy). Please confirm if you wish to amend the application so that it proceeds in relation to ground 11 only. Please note that the notice period for ground 11 is also incorrect, as it only requires 28 days notice. If you amend the application to remove ground 4, and the application is accepted, you will still have to address the Tribunal at the case management discussion as to the validity of the notice and the application could still be refused.*

3. *You were asked to provide either a copy of the signed PRT or other evidence that the tenancy which began in 2012 has been superseded by the PRT in July 2019. Please provide this evidence.*

Please reply to this office with the necessary information by 15 July 2020. If we do not hear from you within this time, the President may decide to reject the application.”

12. On 15 July 2020, the Applicant provided an incomplete response; together with further information about rent.
13. On 20 August 2020, the Application was considered by a legal member of the tribunal acting with the delegated powers of the Chamber President. On 20 August 2020, a letter was sent to the Applicant in relation to the further information required from him, as follows:

“Further information is required before your Application can be considered further.

1. *You must confirm whether you wish to amend your Application, having taken any advice you require from a solicitor or other advisor.*

In your response on 15 July 2020 to the tribunal’s request for further information you have stated: “I am happy to amend to ground 4 only (landlord intends to refurbish) and not ground 11 (breach of tenancy) if it is agreed that the notice period is correct.”

Please note that you cannot seek advice or undertakings from the tribunal about notice periods or any other matters. The tribunal is a judicial body and cannot give legal advice to one party. If you require advice you should seek that from a solicitor or other housing advisor before responding. You may also wish to appoint a representative to act on your behalf. If you do so, you or the representative should provide the name and contact details to the tribunal’s administration.

Please also note that if you are relying upon an intention to refurbish the let property as a ground for eviction in a private residential tenancy, that is Ground 3 in Schedule 3 to the 2016 Act, not ground 4.

2. If you are relying upon Ground 3 in Schedule 3 to the 2016 Act as a ground for eviction, please provide:

a. documentary evidence that you intend to carry out significantly disruptive works to, or in relation to, the let property, for which it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by you. Please note that evidence tending to show that the landlord has the intention mentioned includes (for example)— (a) any planning permission which the intended refurbishment would require, (b) a contract between you and an architect or a builder which concerns the intended refurbishment; and

b. a written submission as to why the date of 30 March 2020 you have specified in Part 4 of the Notice to Leave, for ground 3 is correct, as the day on which the Applicants expected to become entitled to make an application for an eviction order to the First-tier Tribunal, having regard to sections 54(2) and Section 62(4) and (5) of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”); with reference to any legal authorities relied upon and copies of any such authorities with any passages relied upon clearly highlighted.

3. If you relying upon Ground 11 in Schedule 3 to the 2016 Act as a ground for eviction, please provide: a. documentary evidence that the tenant has failed to comply with an obligation under the tenancy. This will require production of the tenancy agreement upon which you are relying or other documentary evidence that proves that the tenant had the obligations you have alleged; and evidence that the tenant has breached those obligations; and

b. a written submission as to why the date of 30 March 2020 you have specified in Part 4 of the Notice to Leave, for ground 4 and/or Ground 11 is correct, as the day on which the Applicants expected to become entitled to make an application for an eviction order to the First-tier Tribunal, having regard to sections 54(2) and Section 62(4) and (5) of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”); with reference to any legal authorities relied upon and copies of any such authorities with any passages relied upon clearly highlighted.

4. In your response on 15 July 2020, you have produced information about rent arrears. That is irrelevant to the grounds specified in your application and in the Notice to Leave dated 6 January 2020. If you wish to rely upon rent arrears as evidence for a ground of eviction, please produce a valid Notice to Leave, with proof of service, which provides the requisite period of notice to the tenant that this ground is to be relied upon.

5. Please produce any documentary evidence that a private residential tenancy agreement was entered into with the tenant commencing on 31 July 2019. In your previous responses you stated that you could not locate the signed PRT agreement and that you were asking the tenant for a copy. Please send the signed PRT agreement or produce any other evidence you have available that a private residential tenancy agreement was entered into commencing on 31 July 2019.

Please reply to this office with the necessary information by 3 September 2020. If we do not hear from you within this time, the President may decide to reject the application."

14. The Applicant failed to respond to the request for further information.

15. On 11 September 2020, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 67 of the 2017 Rules.

16. Rule 8 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."

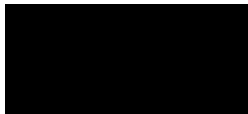
17. After consideration of the Application, the attachments, and the further information requests, it was determined that the requirements for making an application

under Rule 109 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 109. Although the Applicant has responded to some of the tribunal's requests for further information, he has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a good reason to believe that it would not be appropriate to accept the Application within the meaning of Rule 8(1)(c) of the Procedural Rules; therefore the Application must be rejected in terms of Rule 8(1).

18. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.



Ms. Susanne L. M. Tanner Q.C.

Legal Member

11 September 2020