



**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

185E St Michaels Street, Dumfries, DG1 2PP

**Case Reference: FTS/HPC/EV/20/1777**

**Late Executors of Mr D Athwal (Applicant)  
Mr Adrian Robinson (Respondent)**

1. On 24 August 2020 the Tribunal received an application forms E for the property at 185E St Michaels Street, Dumfries, DG1 2PP (the property) under Rule 109 of the Procedure Rules. The applications was dated 12 August 2020.
2. Appended to the application was a Notice to Leave for the respondent. This was dated 16 August 2020 and part 4 of the Notice to Leave stated: An application will not be submitted to the Tribunal for an eviction order before 16.9.2020.
3. The documents lodged by the applicant are referred to for their terms and held to be incorporated herein.

**DECISION**

4. 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."*

- 5. 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 Tribunal would point out that the notice period stated in the Notice to Leave should be recalculated by the appellant in terms of the changes to the Private Housing (Tenancies) (Scotland) Act 2020 introduced for the period after 7

April 2020 by the Coronavirus (Scotland) Act 2020, in particular schedule 1 paragraphs 1 and 2.

2. However, regardless of the further content of the Notice to Leave, the application was made on 24 August 2020. The Notice to Leave specifies that no application will be made to the Tribunal before 16.9.2020. Regardless of the content of the application otherwise, it is clear that the application cannot be accepted before the expiry of the period stated in part 4 of the Notices to Leave. The application was made prematurely. **It would not be appropriate for the Tribunal to accept an application which is made prior to the date stated in part 4 of the Notice to Leave as the first day on which proceedings can be raised.**

### 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.

P Hennig-McFatridge

Petra Hennig McFatridge

Legal Member

2 September 2020