



**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/CV/21/2175

Parties

Mr Nic Bauer (Applicant)

Mr Neil Anderson (Respondent)

20 High Street, Alyth, Blairgowrie, PH11 8DW (the property)

**A BACKGROUND**

1. On 9 September 2021 the Applicant lodged with the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) an application initially made under Rule 111 of the Procedural Rules regarding the property. The application was directed against the Respondent and the Applicant stated he wished to apply for a payment order in

terms of S 16 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The Applicant provided a copy of the tenancy agreement and of a notice sent to the Respondent dated 3 June 2021 with proof of delivery on 5 June 2021. The notice referred to alleged breaches of the obligations in S 10 and S 11 of the Act. The information in terms of S 10 was stated as *“Prescribed Information (Deposit Protection), EICR (Electrical Installation Condition Report), EPC (Energy Performance Certificate), Landlords Gas Safety Record”* and under S 11 as *“Easy Read Notes for the Scottish Government Model Tenancy Agreement”* and a copy of a document headed Deposit Protection Service A guide to landlords was attached, as was a guidance document on electronic installations.

2. On 23 September 2021 the FTT wrote to the Applicant in the following terms: “You have raised an application under Section 16 of the Private Residential (Tenancies) (Scotland) Act 2016 however any actions raised under this section can only be raised during the course of the tenancy in question. You have indicated you formerly lived at the tenancy address and it appears the tenancy may be at an end. Please confirm if this is the case and if so if you wish to withdraw your application.

You may also wish to note that any application under this section requires to be made under Rules 105 and 107 depending on the information you are alleging has not been supplied. If you do maintain that you have a right to raise this action then please amend your application by providing an application under one or both rules with details of what information you allege has not been supplied and evidence that the tenancy is continuing.”

3. On 7 October 2021 the Applicant replied *“Having read the attached documentation I can confirm I no longer live at the tenancy address as I had to leave due to continued harassment and intimidation by the landlord but had started the process of the application whilst still living at the tenancy property and for that reason I don't want to withdraw my application. I also note that the application rule number may be incorrect. If it is to be made under Rules 105 and 107 is this still under the use of Form F”*. No end date of the tenancy was provided.

4. On 4 November 2021 the FTT again wrote to the Applicant in the following terms: “1. Please advise when the tenancy ended. 2. You have already been advised that an application under S 16 of the Private Housing (Tenancies) (Scotland) Act 2016 cannot be made under Rule 111. The applicable rules for this type of application are Rules 105 and 107 depending on whether the application is based on S 10 or S 11. Please state the rule under which you wish to apply and use the appropriate form. Please detail on which basis you consider S 10 or 11 of the Private Housing (Tenancies) (Scotland) Act 2016 were not adhered to, bearing in mind that the information referred to only relates to the information set out in the Private Residential Tenancies (information for Tenants) (Scotland) Regulations 2017. Please

note that unless the application is made correctly it will have to be rejected by the Tribunal. “

5. On 17 November 2021 the Applicant wrote: *“In response to your email I received I wish to advise of the two questions in the attached letter. 1. The tenancy ended on the 20th July 2021. This was ended by myself in the appropriate way but had to leave due the harassment and intimidation of the landlord and his associates and left me homeless. 2. I wish to apply and amend the application to rule number Rule 107 and the basis to which this should be considered is Section 11. Please advise whether my email is acceptable for the amended change or if there is an appropriate form for this and if so please advise where this can be found. If a specific form is required I would like some extra time to do this as I'm currently dealing with a bereavement.”* The application at that stage was changed to an application under Rule 107 of the Procedural Rules and S 11 of the Act.
6. The documents lodged with the application and the correspondence with the FTT are referred to for their terms and held to be incorporated herein.

## **B DECISION**

1. 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."*

- 2. 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.**

## **C RELEVANT LEGISLATION**

**FTT Procedural Rules: Rule 107.** Where the tenant makes an application under section 16(1) (to sanction failure to provide information) of the 2016 Act, the application must—

(a)state—

(i)the name and address of the tenant;

(ii)the name, address and profession of any representative of the tenant;

(iii)the name, address and registration number (if any) of the landlord; and

(iv)that the landlord has failed to provide the tenant with (either or both)—

(aa)a document setting out all the terms of the tenancy required under section 10 [F71](#);

(bb)information required under section 11,

of the 2016 Act;

(b)be accompanied by a copy of the notice given to the landlord under section 16(3)(c) of the 2016 Act; and

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

First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

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

#### **11Duty to provide specified information**

(1)The Scottish Ministers may by regulations impose a duty on any person who is, or is to be, the landlord under a private residential tenancy to provide the person who is, or is to be, the tenant—

(a)with information specified in the regulations,

(b) by a deadline specified in the regulations.

(2) The power to specify information under subsection (1)(a) includes the power to specify the form in which the information is to be provided.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.

(4) But subsection (3) does not apply in any case in which consultation has been carried out by the Scottish Ministers more generally, without specific reference to such tenants and landlords.

#### **16 First-tier Tribunal's power to sanction failure to provide information**

(1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where—

(a) the landlord has failed to perform a duty arising by virtue of section 10 or 11 to provide the tenant with information,

(b) at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and

(c) the landlord does not have a reasonable excuse for failing to perform the duty.

(2) An order under this subsection is one requiring the landlord to pay the person who made the application an amount not exceeding—

(a) three months' rent, if the order is in respect of a failure by the landlord to perform—

(i) a duty arising by virtue of section 10, or

(ii) one or more duties arising by virtue of section 11,

(b) six months' rent, if the order is in respect of a failure by the landlord to perform—

(i) a duty arising by virtue of section 10, and

(ii) one or more duties arising by virtue of section 11.

(3) An application under subsection (1)—

(a) may be made only during the course of the tenancy in question,

(b) where the application relates to a failure to perform a duty arising by virtue of section 10, may be made only as part of an application under section 14(1), and

(c) may not be made unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.

(4) If—

(a)an application has been made under subsection (1) in respect of a failure to perform a duty arising by virtue of section 11, and

(b)at the time the application was made, an application could have been made in respect of a failure to perform another duty arising by virtue of section 11,

no application may be made in respect of that other duty.

(5)Where two or more persons jointly are the landlord under the tenancy in question, an order by the First-tier Tribunal under subsection (2) may—

(a)be made against all, some or only one of the joint landlords,

(b)state that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed the maximum set by subsection (2),

(c)state that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(6)In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.

(7)In subsection (2), “rent” means—

(a)the amount that was payable in rent under the tenancy at the time that notice of the application was given to the landlord, and

(b)in a case where two or more persons jointly are the tenant under the tenancy, the amount mentioned in paragraph (a) divided by the number of those persons.

## **The Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017**

### **Duty to provide specified information**

**3.**—(1) For the purposes of section 11(1)(a) of the Act (duty to provide specified information), the person who is, or is to be, the landlord under a private residential tenancy must provide the person who is, or is to be, the tenant with—

(a)where the written terms of the tenancy are in the form of the Model Private Residential Tenancy Agreement<sup>(3)</sup>, the Easy Read Notes for the Scottish Government Model Private Residential Tenancy Agreement<sup>(4)</sup>; or

(b)where the written terms of the tenancy are in the form of a tenancy agreement drafted by the landlord, the Private Residential Tenancy Statutory Terms Supporting Notes<sup>(5)</sup>.

## D REASONS FOR REJECTION

1. The Applicant provided a copy tenancy agreement, which was not in the form of the Model Private Residential Tenancy Agreement for a private residential tenancy. It was a document drafted by the Respondent. Therefor the information required to be provided in terms of Regulation 3 (1) (b) of The Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017 was not, as stated in the notice to the Respondent, the Easy Read Notes but, as stated in Regulation 3 (1) (b) of the above named Regulations the Private Residential Tenancy Statutory Terms Supporting Notes. Incidentally, the FTT also notes that the documents the Applicant had listed in the notice served on the Respondent dated 3 June 2021 as terms he should have been provided with under S 10 of the Act are not documents or terms which are relevant to S 10 of the Act. The terms referred to in S 10 of the Act relate to the terms stated in The Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017. These do not include the matters the Appellant had listed in the notice such as Gas Safety Records, EIPC and ECR. The notice sent by the Applicant thus did not constitute a valid notice to the Respondent as required for an application in terms of S 16 (3) (c) and S 17 of the Act.
2. More fundamentally importantly, however, the application to the FTT was not lodged until 9 September 2021 and the information requested by the FTT was not provided until 17 November 2021. S 16 (3) states that “An application under subsection (1)— (a) may be made only during the course of the tenancy in question”. The “application” referred to clearly relates to the application made to the FTT as stated in S 16 (1) of the Act and not to the date of the notice is served on a landlord in terms of S 17 of the Act. The Applicant provided information on 17 November 2021 that the tenancy had ended on 20 July 2021. The application was thus not made during the course of the tenancy.
3. It would not be appropriate for the Tribunal to accept the application because:
  - a) The notice provided with the application was not a valid notice in terms of S 17 and 16 (3) (c) of the Act as it referred to the wrong documentation and terms.
  - b) The application to the FTT was made at a time after the course of the tenancy in question had ended. The end date of the tenancy was 20 July 2021, the application was lodged in September 2021 and the missing information requested by the FTT not submitted until 17 November 2021. The FTT only received the information of the tenancy end date on 17 November 2021 and it only became clear on that date that the application had been lodged at a time when such an application could no longer be made in terms of S 16 (3) (a) of the Act.

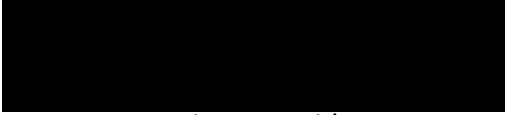
### What you should do now

**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  
1 December 2021