



**DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER  
OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE  
CHAMBER PRESIDENT**

Under Rule 8 and 5 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/23/2998

**Parties**

**Mr David Edes (Applicant)**

**Miss Shania Driscombe (Respondent)**

**Flat 2, 41 High Street, Alness, IV17 0PT (House)**

1. On 30<sup>th</sup> August 2023, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for eviction of the Tenant by the Landlord. The Applicant was seeking eviction in terms of Ground 1, 1A that he wished to sell the Property and also Ground 14 that the tenant had engaged in anti-social behaviour.
2. The Applicant lodged a copy of a Notice to Leave addressed to the Respondent citing all 3 grounds dated 22<sup>nd</sup> July 2023 and specifying a date of 21<sup>st</sup> August as the date after which the landlord will be entitled to make an application for eviction.. He also lodged a statement regarding the alleged anti-social behavior and a letter to CAB.

3. The Tribunal requested further information from the applicant by e-mail dated. The Tribunal asked for the following information in respect of this application:-
4. *“Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member responds as follows: 1. 1. Please provide a copy of the tenancy agreement. 2. 2. Please provide proof of service of the Notice to Leave on the Respondent. 3. 3. Please provide a copy of and proof of service of the section 11 Notice on the local authority. 4. 4. The Notice to Leave specifies Ground 1, 1A and 14. The notice period for Grounds 1 and 1A is 84 days. Please provide your comments on the validity of the Notice to Leave. 5. 5. Please provide evidence in support of Grounds 1 and 1A such as terms of engagement with a solicitor or estate agent and evidence of financial hardship. Please provide the information requested within 14 days failing which the application will be rejected.”*
5. The Applicant responded on 26<sup>th</sup> September and enclosed a copy of the tenancy agreement which is dated 1<sup>st</sup> April 2022 and although it purports to be a short assured tenancy it is actually a private residential tenancy because it has commenced after 1<sup>st</sup> December 2017. The Applicant also advised the notice to leave was “hand delivered by me to letterbox 22/07/23” and that “ I cannot move forward with sale as she refuses entry to get home report done 5) as a OAP losing £500 pm when I’ve a mortgage to pay is a struggle ! I’m eating into savings that’s why I need to sell it”
6. The Tribunal wrote again to the Applicant on 13<sup>th</sup> October 2023 asking the following *‘Your further information has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has stated the following: 1. It would appear that the Notice to Leave has not been properly served. The legislation does not allow for delivery of the Notice by letterbox. You should deliver the Notice by the method agreed in the tenancy agreement, which must be a method provided for by legislation. There are further issues with the Notice in that you have included grounds 1 and 1A without providing the required period of notice (84 days). In the circumstances, it is unlikely that the application can be accepted. Please consider withdrawing the application and serving a further Notice to Leave, ensuring that you give the correct period of notice for the ground(s) on which you wish to rely. If you intend*

*to rely on several grounds with different periods of notice, you must ensure the longer period is given. You may wish to take advice on this matter to ensure that the correct period of notice is given and that the method of service is acceptable. You should be aware of the following for future applications: 2. If you intend to proceed under grounds 1 and 1A, you must provide sufficient evidence to support the grounds. Ground 1 requires evidence such as a home report or a letter of engagement with a selling solicitor. Ground 1A requires evidence of financial hardship.”*

7. The Applicant responded on 17<sup>th</sup> October 2023 advising that he had emailed notice to the Respondent on 24<sup>th</sup> June 2023 and provided a copy of the email he sent. The email to the Respondent does not specifically mention if a copy of the Notice to leave was included however it was sent on 24<sup>th</sup> June 2023 which does not give even the 28 days' notice if Ground 14 only was relied upon as 48 hours have to be allowed for receipt of an email and a further day specified in terms of the Act. In addition the Applicant supplied a letter from a solicitor in respect of a sale that fell through and a letter from an estate agent in support of Ground 1.

## **8. DECISION**

9. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

10.

*"Rejection of application*

*Rule 5 (1) An Application is held to have been made on the date that it is lodged if on that date it is lodged in the manner as set out in rules 43, 47, to 50, 55, 59,61,65,to 70,72,75 to 91, 93 to 95,98 to 101,103 or 105 to 111 as appropriate.*

*(2) the Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*

*(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal*

*under the delegated powers of the Chamber President, may request further documents and the application is to be held made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

*(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

*(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.*

*(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.*

*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."*

11. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 5(4) and Rule 8(1) (c) of the Procedural Rules.

## **REASONS FOR DECISION**

12. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:-  
*"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

13. The applicant has lodged a notice to leave which has been apparently been posted through the letter box of the Respondent's property and not hand delivered personally. In terms of S 26 of the Interpretation and Legislative Reform Scotland Act 2010, which governs the service of notices in respect of the 2016 Act, the service of a document can be made in the following manner only

" a) by being delivered personally to the person

b) by being sent to the proper address of the person by registered post service or by a postal service which provides for the delivery of the document to be recorded  
c) or where subsection c applies by being sent to the person by electronic communication"

Subsection c only applies where the parties agree that " a document may be sent to the person by being transmitted to an electronic address and in an electronic

form specified by the person for the purpose.” The Tenancy agreement entered into between the Applicant and the Respondent did not contain an agreement by the parties that notice could be sent by email. Indeed the lease contains a clause that specifically provides that the notice should be sent by recorded delivery. There was no agreement that email delivery would be acceptable and so even if the Applicant had shown evidence that the email he sent contained a copy of the Notice to Leave, and even if it had given adequate notice, this would not be a valid method of service. Hand delivery is a permitted form of service but requires personally delivery into the hands of the tenant. As the notice to leave has not been validly served it cannot be relied upon in this application. In addition the Notice to Leave only gave 28 days’ notice plus 2 extra days. Even if this application was reliant on only the anti-social behaviour ground the Applicant has not given the extra day required in terms of S64 (4) of the Act and a notice which contains grounds 1 and ground 1A requires to give 84 days’ notice plus 2 days if it is served by recorded delivery and then a further day to meet the requirements of s64 (4) of the 2016 Act. The notice to leave did not give the required notice and so for that reason it is also invalid. Given the notice to leave is not valid as it has not given the required notice and has not been served properly this application has no prospect of success. In the circumstances I consider that this application is misconceived and has no hope of success therefore it must be rejected.

14. Accordingly, for this reason, this application must be rejected upon the basis that I have 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.

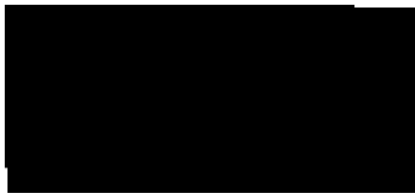
15. It is open to the Applicant to reapply once he has served a new notice to leave with the appropriate notice period given. The Applicant may wish to seek advice on this before doing so as matters relating to evictions are complex.

### **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.



Jan Todd  
Legal Member  
9<sup>th</sup> November 2023