



**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/23/2747

**Parties**

**Coorie Doon Reekie Ltd (Applicant)**

**Mr Steven Ferguson (Respondent)**

**13A Comely Green Place, Edinburgh, EH7 5SY (House)**

1. On 14.8.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109. Rule 109 relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). The ground stated on the application is 1A. The application was dated 11.8.23. The following documents were provided: notice to leave dated 9.5.23 on ground 1 only stating as the date proceedings could first be raised 8.8.23, tenancy agreement, and mortgage statement.
2. The application was not accompanied by a S 11 notice and any evidence how and

when the notice to leave was served.

3. In letters dated 15.8.23 and 15.9.23 the FTT pointed out that for an application to be made a copy of the s 11 notice and proof of service and of proof of service of the notice to leave would be required. The applicant was also asked to make representations why the FTT should consider the ground stated in the application although this had not been stated in the notice to leave. The last date for a reply was stated as 29.9.23. No reply has been received to this last request.
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 (b) include the requirement to lodge (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. 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.
3. The applicant had been repeatedly asked to produce evidence of service of the notice to leave.
4. S 52 (5) of the 2016 states "The Tribunal may not consider whether an eviction ground applies unless it is a ground which— (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought." The applicant had been asked to make representations as to why the FTT should consider the application under ground 1A although the notice to leave did not specify that ground. No answer was provided.
5. Despite repeated requests to produce the necessary documents and information to complete the application, these 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. 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 McFatridge

Legal Member

26 October 2023