



**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/23/3022

**Parties**

**Dr Benedict Nevo (Applicant)**

**Ms Caitlin Wilson (Respondent)**

**Mr Uzoma Aaron Obiorah (Applicant's Representative)**

**60 Burnside Avenue, Bellshill, ML4 2PE (House)**

1. On 31.8.2023 the Applicant's representative made an application under Rule 109 of the Procedural Rules, being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). This was originally made on grounds 3, 11 and 12A. There was extensive correspondence between the First-tier Tribunal for Scotland (FTT) and the Applicant's representative regarding the Notice to Leave and

the requirements of submitting certain further information. The correspondence is referred to for its terms and held to be incorporated herein.

2. In an email of 21.9.2023 the Applicant's representative submitted further documents, including a further and current Notice to Leave dated 20.9.2023 and stating in part 4 as the first day when proceedings could be raised with the FTT 17.12.2023.
3. Unfortunately the email did not contain further information previously requested repeatedly by the FTT and did not contain information about how the new Notice to Leave was served. It also did not contain the evidence regarding ground 3 previously requested in the emails from the FTT to the Applicant's representative on 19.9.2023 and 16.10.2023 and in the latter email the Applicant had been advised that if no further information is received the application may be rejected. No further information has been received.
4. The documents referred to above 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**

7. Applicable legislation:
  - Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) has to 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
    - iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

S 54 of the Private Housing (Tenancies) (Scotland) Act 2016 Restriction on applying during the notice period

(1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

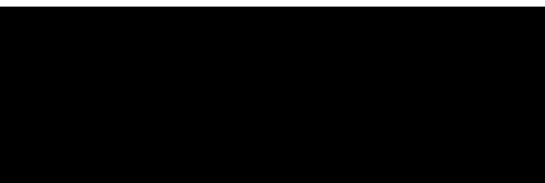
8. The Notice to Leave provided does not expire until 17.12.2023 and the application is thus premature. The Applicant may raise a fresh application when the current notice expires. If he does so he is reminded that he will have to do so in accordance with the requirements stated in rule 109 of the Rules of Procedure, in particular that it will have to be accompanied by evidence that the grounds stated in the Notice to Leave and in the application are met.
  
9. In terms of rule 27 (1) of the Procedure Rules the FTT may dismiss the whole or part of the proceedings if the applicant failed to co-operate with the FTT to such an extent that the FTT cannot deal with the proceedings justly and fairly. It is not appropriate for the FTT to continue to correspond in terms of a premature and incomplete application if the Applicant's representative clearly no longer engages in the process and leaves requests of the FTT for further information unanswered.
  
10. It would not be appropriate for the Tribunal to accept the application for the reasons stated above. The application is thus rejected. This rejection decision would not prevent a new application to be raised once the notice period has expired.

### **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.**



**Legal Member**

**27 November 2023**