



**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/23/3543

**Parties**

**Mr Frank Carey (Applicant)**

**Mr Martyn Feeley (Respondent)**

**Premier Properties (Applicant's Representative)**

**2 Aitken Street, Dalry, KA24 4BX (House)**

1. On 6.10.23 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable grounds 11 and 12 of schedule 3 of the 2016 Act,. The

application was accompanied by a copy of a Notice to leave dated 17.3.23 ground 12 and a rental statement.

2. The application was not accompanied by a S 11 notice.
3. On 9.10.23 the FTT requested further information from the Applicant as follows: "The in-house convener has reviewed the eviction application Before a decision can be made, we need you to provide us with the following: 1. Please provide a copy of the tenancy agreement. 2. Please explain why the registered landlord is Bas Properties. 3. Please provide your signed mandate from the applicant authorising you to act. 4. Ground 11 is not mentioned in the notice to leave. Please amend the application to remove ground 11 or provide evidence of the eviction ground and tell us why ground 11 should form part of the application. 5. Please provide a copy of the rent statement attached to the notice to leave. 6. Please provide a rent statement with three columns showing the rent due, payments received and a running total. The information you have provided does not show how the arrears of £2075 accrued. 7. Please provide the section 11 notice on the local authority and proof of service. 8. Please provide evidence of compliance with the pre- action requirements. Please reply to this office with the necessary information by 23 October 2023. If we do not hear from you within this time, the President may decide to reject the application."
4. The Applicant provided in due course authorisation of a representative, an explanation about BAS Properties being a trading name rather than an organization and provided the key terms of the tenancy agreement as well as an updated rent statement. He also removed the reference to ground 11.
5. On 8.11.23 the FTT again requested further information and in particular a copy of the S 11 notice with evidence of service. This has still not been produced.
6. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

7. 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."*

- 8. 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 under (b) include the requirement to lodge (i) evidence that the 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 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. Despite requests to produce this document it has still not been submitted.
4. 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.
5. 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.**

## **A Test Member**

Petra Hennig McFatridge

Legal Member

29 November 2023