



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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 Procedure Rules")**

Case Reference: FTS/HPC/EV/23/4685

1 Galalaw Cottage, Skirling, Biggar ("the Property")

George Noble, Galalaw Farm, Skirling, Biggar ("the Applicant")

Robert Davidson, 1 Galalaw Cottage, Skirling, Biggar ("the Respondent")

1. The Applicant lodged an application for an eviction order in terms of Rule 109 of the Procedure Rules and Section 51 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). A Notice to leave and post office certificate of posting were submitted in support of the application.
2. In response to a request for further information, the Applicant advised the Tribunal that he had made enquiries with Royal Mail and that the notice sent by recorded delivery post on 7 November 2023, had been lost. He later advised the Tribunal that a fresh notice had been sent. On two occasions, the Tribunal requested a copy of the new notice, with evidence that it had been given to the Respondent, but no response has been received.

Decision

3. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application."

Reasons for decision

4. Rule 5 of the Procedure Rules states that 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..." the relevant Rule. In terms of Rules 5(2) and (3) the Chamber President or a Member with delegated powers must assess whether the "mandatory requirements for lodgement have been met" and "may request further documents".


5. The application was lodged in terms of Rule 109. This Rule requires an application to be accompanied by a notice to leave that has been given to the Respondent. The Applicant has failed to do this. The notice lodged by the Applicant was not delivered. He then indicated that he had issued a fresh notice, but has failed to provide a copy of this with evidence that it was given to the Respondent. The Applicant has also failed to provide these documents when directed to do so in terms of Rule 5(2) and (3) of the Procedure Rules
6. The Applicant has failed to comply with Rules 5 and 109 of the Procedure Rules. In the circumstances, the Legal Member is satisfied that there is good reason to believe that it would not be appropriate to accept the application. The application is rejected on that basis.

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.



Josephine Bonnar, Legal Member
23 April 2024