



**Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/EV/24/0834**

**Parties:**

**Sandra Kelly ("the Applicant")**

**Lisa Mundie ("the Respondent")**

**Tribunal Member:**

**H Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.**

**Background**

1. An application for an eviction order was made under Rule 109 on 20<sup>th</sup> February 2024 with associated documents.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant on 20<sup>th</sup> March 2024 stating the following:

1. You have included a photograph showing a person posting a letter through a door. Presumably this is intended to be evidence of service of the Notice to Leave, however, service by posting through a letterbox is not an acceptable method of service in terms of the legislation. You have also included recorded delivery posting and tracking information which shows delivery of an item after the notice period had passed, so presumably this is not intended to be evidence of valid service of the Notice to Leave upon the Respondent. If you have not effected service by an acceptable method, you may wish to consider withdrawing the application and serving a further Notice, ensuring that it is completed and served correctly. You may wish to take advice on this matter. Please confirm if you are withdrawing the application.



You should also be aware of the following:

2. You have ticked both Rule 66 and Rule 109 on the application form. The application can only be accepted under one rule, and the tenancy commencement date would suggest this is a Rule 109 application, despite an incorrect type of tenancy agreement having been issued.
3. You have stated that the application is made under ground 8A. There is no ground 8A in the relevant legislation and this is not the ground you have ticked on the Notice to Leave.
4. You have not lodged any evidence of compliance with the pre-action protocol. This is not mandatory but is taken into account when the reasonableness of granting an order is considered if an application is accepted and proceeds to a case management discussion.

Please reply to this office with the necessary information by 3 April 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. The Respondent responded by lodging a further application form and explaining that the Notice to Leave was hand-delivered to the Property and that it was sent by Recorded Delivery after the notice period had passed.
4. The application was considered by a Legal Member on 23<sup>rd</sup> April 2024.

### Reasons for Decision

5. The Tribunal considered the application in terms of Rule 8 of the Chamber 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 ...*

*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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. The Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") does not make provision for the service of notices under the Act. The rules set out in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act") therefore apply.

## **26 Service of documents**

(1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression "serve", "give", "send" or any other expression is used).

(2) The document may be served on the person—

(a) by being delivered personally to the person,

(b) by being sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c. 26)), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) where subsection (3) applies, by being sent to the person using electronic communications.

(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the 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.

(4) For the purposes of subsection (2)(b), the proper address of a person is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,



(c) in any other case, the last known address of the person.

(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

7. The Notice to Leave in this application was served by hand-delivery to the Property, which is not a valid method in terms of the 2010 Act. A copy of the Notice to Leave was sent to the Respondent by Recorded Delivery on 25<sup>th</sup> January 2024, which was after the notice period had ended. Service of the Notice to Leave upon the Respondent, therefore, has not been properly effected by a valid method of service.
8. There is good reason to believe it would not be appropriate to accept the application. The application is accordingly rejected.

### Right of Appeal

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

Helen Forbes

23<sup>rd</sup> April 2024

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Legal Member/Chair

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Date