



**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/23/4634

Parties

Mr Shaun Barton (Applicant)

Mr Duncan MacDonald (Respondent)

1 George Street, Hunter Quay, Dunoon, Argyll, PA23 8JT (House)

1. On 21.12.2023 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 ground 4 of schedule 3 of the 2016 Act. The Applicant stated he required the property after his wife's death.
2. The application was accompanied by a Notice to Leave dated 29.9.23 with a date in part 4 stated as 22.12.23. No other documents were provided. The title deeds show

the property owned by the applicant to a ¼ pro indiviso share and by Marjory Ann Matthews to a ¾ pro indiviso share. The landlord registration is in the name of Marjory Ann Barton.

3. The FTT wrote to the Applicant on 4 occasions requesting evidence of how and when the Notice to Leave was served on the tenant, a copy of the S 11 notice and proof of that having been given to the local authority and requesting documentation showing the current ownership of the property. The last request was sent on 29.4.24 with a reply requested by 13.5.24.
4. The Applicant sent a copy of the tenancy agreement in the name of Marjory Barton as the landlord and stated his wife died in September 2023, he was now being evicted as her liferent entitlement ended with her death and he requires the property for his own use. He did not provide the S 11 notice or proof of this having been given to the local authority.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. 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."

- 7. 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 (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 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. Although a Notice to Leave document was provided, there is no evidence when and how this was given to the tenant.
3. 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.
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.

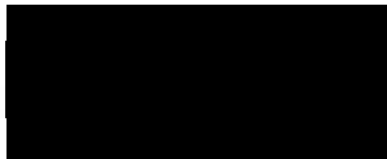
5. Because the application at present does not fulfil the lodging criteria stated in the relevant rule it is rejected as it would not be appropriate for the FTT to accept an incomplete application.
6. For the avoidance of doubt, this decision does not prevent the Applicant lodging a fresh application once he has all the necessary documentation available.

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
27 May 2024