



**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/24/0961

Parties

Mrs Lorna Woodward (Applicant)

Mr Tumuno Inichinbia (Respondent)

R Nixon Letting Agents (Applicant's Representative)

Flat 7 2 Ayr Street, Springburn, Glasgow, G21 4DE (House)

1. The application received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 26.2.24. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). Included with the application were a notice to leave dated 14.9.23, a S 11 Notice as required in terms of S 56 of the Act, an email to the letting agent from the applicant, a Private Residential Tenancy agreement commencing 9.8.21 showing that there were two tenants and track and trace confirmation of the receipt of the NTL by the respondent on 16.8.23. The NTL and the S 11 notice stated two tenants, as did the tenancy agreement lodged. The application is only directed against one tenant, Mr Tumuno Inichinbia and not against

the joint tenant Ibimina Inichinbia.

2. The FTT wrote to the applicant on 20.3.24, 25.4.24 and 21.5.24 requesting the following further information: *1. There is a joint tenant but you have only mentioned one Respondent in the application form. Please confirm that the joint tenant is to be a Respondent and provide their full details. 2. Please provide evidence of service of the Notice to Leave on both tenants. You have only provided one posting receipt and one tracking report. 3. Please provide evidence of landlord registration, if available.'*
3. On 21.5.24 the FTT also sent a letter by post requesting the information. The letter and email requesting the above stated that unless a reply was received by 4.6.24 the application may be rejected. Since the application was first received no further contact has been made by the applicant and no reply has been received to any of the requests for further information.

DECISION

4. 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."

5. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

1. S 51 of the Act states: *(1)The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. In terms of S 52 (3) of the Act "an application must be accompanied by a notice to leave which has been given to the tenant." In terms of S 78 (3) of the Act :"* *In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise."* Rule 109 of the Rules of Procedure requires that any application under this rule is *"accompanied by a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act"*
2. The tenancy agreement lodged shows that there were two joint tenants. The application has only been raised against one respondent, who is one of the joint tenants. S 51 does not permit the FTT to issue an eviction order against only one of two joint tenants as the "tenant" is defined as all of the joint tenants in S 78 (3) of the Act. An application against only one of two joint tenants is not competent.
3. The documentation provided does not show that the NTL, although it states the second tenant's name as well as the respondent's name, was served on the second tenant, Ibimina Inichibina. There is only one recorded delivery record and this was signed for by the respondent. In terms of S 52 (3) of the Act and rule 109 of the Rules of Procedure, an application for an eviction order against a tenant must be accompanied by a copy of a

notice to leave which has been given to the tenant. In terms of S 78 (3) the “tenant” refers to all joint tenants where a tenancy relates to joint tenants and thus the notice to leave required to make a valid application to the FTT must have been served on all joint tenants to be valid. No evidence has been provided that a NTL was served on the joint tenant Ibimina Inichibina.

4. The FTT had alerted the applicant to the problem and given three opportunities for her to amend the application and to provide the further information regarding her landlord registration and service of the NTL on both tenants. She has not provided this and has not amended the application.
5. As the application was not accompanied by a valid NTL served on both joint tenants, it would not be appropriate to accept the application.
6. As the application was only directed against one joint tenant, which is not competent in terms of S 51 and S 78 (3) of the Act the application, it would not be appropriate to accept the application.
7. The application is thus rejected.
8. Furthermore, the applicant has not cooperated with the application process and has not replied to correspondence since March 2024. It appears that the application is no longer being pursued.

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

12 June 2024