



**DECISION AND STATEMENT OF REASONS OF NICOLA WEIR, 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/24/1339**

**29 Calgary Avenue, Howden, Livingstone, EH54 6BJ ("the Property")**

**Melanie Steven ("the Applicant")**

**Adele Russell ("the Respondent")**

1. The Applicant seeks an eviction order in terms of Rule 109 of the Procedure Rules and Section 51(1) of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act"). Some supporting documentation was lodged with the application, which was lodged with the Tribunal on 19 March 2024. However there were some issues and discrepancies with the application and several requests for clarification/further information have been issued by the Tribunal.
2. The Applicant responded to the earlier requests for information but these did not address all outstanding issues. A further request for information was issued by the Tribunal on 13 June 2024, to which there was no response from the Applicant within the time limit stated. Accordingly, on 30 July 2024, the Tribunal issued a further request, in similar terms, as follows:-

*"We refer to our email of 13 June 2024 and note that we do not appear to have received a response from you. Can you please provide the following in order that a decision can be made as to whether your application can proceed:-*

- *Please provide an amended application form which includes the names and contact details of both tenants (Respondents). Please ensure that the amended form correctly lists the eviction grounds. It appears from the Notice to Leave you have provided that you are seeking to rely upon grounds 11 and 12.*

- *You state that you hand delivered the Notice to Leave to the tenants. Please confirm the date on which you delivered the Notice. We require this information to confirm that the appropriate notice period has been given to the tenants. Please also confirm if it was handed to/addressed to both tenants.*

- *Please provide a typed rent statement showing the rent due, payments received*

*and running monthly total outstanding for the whole period of the arrears.*

- *Please provide evidence of the breach of tenancy for ground 11.*
- *In terms of the rent arrears the messages submitted do not establish that you have complied with the rent arrears pre action protocol. If you have complied, please provide evidence.*

*We would again reiterate that the application cannot be accepted until you have addressed these matters. We will allow a final opportunity for you to provide a response, and we would strongly suggest that you seek legal advice if you require guidance.*

*Please provide a response by 13 August 2024 failing which your application may be rejected without further notice.”*

3. No response was received by the time-limit stated, or since.

## **Decision**

4. After detailed 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**

5. 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”.
6. The Applicant has not lodged an application in accordance with the Procedure Rules in that she has not provided all supporting documentation required nor responded to requests by the Tribunal for further documentation/clarification. The application is incomplete and not currently a valid application. The Applicant has been given several opportunities to clarify the position and submit the documentation required but has failed to do so.
7. The Tribunal informed the Applicant on 30 July 2024 that she was being given one final opportunity to address the issues with the application by 13 August 2024, failing which the application may be rejected. She was also urged to consider taking legal advice on the matter.
8. 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.**

## Nicola Weir

Legal Member  
6 September 2024