



**Decision with Statement of Reasons of Alan Strain, 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/24/2219**

## **Parties**

**Mrs Robina Addison (Applicant)**

**Miss Lailah Morrison (Respondent)**

**Ms Jaimi Addison (Applicant's Representative)**

**31 Wharf Street, Montrose, Angus, DD10 8BD (House)**

**Tribunal Member:**

**Alan Strain (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).**

## **Background**

1. The application was received by the Tribunal under Rule 109 on 15 May 2024.
2. The application was considered by the Tribunal and further information was requested by email of 14 June 2024 as follows:

“A Legal Member of the Tribunal with delegated powers of the Chamber President has now considered your application and has requested the following:- 1. It is noted that the Applicant is Robina Addison and the title deeds and Landlord Registration are in that name. However, the tenancy agreement specified yourself as the landlord. Please confirm your relationship with Robina Addison and provide her written authority to you having entered into the tenancy agreement on her behalf and also dealing with this Tribunal application on her behalf. 2. The Notice to Leave lodged with the application does not appear to be in the correct format or contain all the information required in terms of the legislation. It also only specifies eviction ground 1 - that the landlord intends to sell, whereas the application also mentions Grounds 1A and 10. Please provide an explanation as to why you consider the Notice to Leave to be valid, given these issues. 3. You require to produce evidence of the intention to sell, such as confirmation from a solicitor or estate agent that they are instructed to market/sell the property. 4. It is noted that you posted the Notice to Leave to the tenant and that she has sent you a photograph of her holding the document. However, the Tribunal needs to see proof of the date of postage and delivery to the tenant to establish that sufficient notice was given. Please provide evidence of this, such as a postage receipt if it was sent by recorded delivery and a ‘track and trace’ delivery receipt from Royal Mail. 5. Please provide a copy of the Section 11 Notice that you sent to the local authority and proof of postage of it. If you cannot provide these items, you would require to serve a fresh Section 11 Notice and provide a copy of it and proof of service on the local authority, either a postal receipt or covering email, etc. It may be that if the Notice to Leave is not valid or you cannot establish when it was served, this application will not be able to proceed. It is recommended that you seek independent legal advice on these matters as this is a technical and complex area of law. It may be that you will require to withdraw this application, serve a fresh Notice to Leave in the correct format and then re-submit a fresh application to the Tribunal once the new notice period has expired. Please respond within 14 days in order that the application can be further considered. Otherwise, the application may require to be formally rejected. Please reply to this office with the necessary information by 28 June 2024.”

The Applicant’s Representative responded by email of 18 June 2024 in the following terms:

“I’m afraid I cannot provide proof of postage of the notice to leave being posted to either the tenant or the authorities as I just sent these out without recorded delivery. I was very naïve as I didn’t foresee any of this happening. As the tenant is a friend of a friend, I assumed once she received notice of our intention to sell the flat, she would look for accommodation elsewhere and vacate the premises owned by my mother. Therefore it looks like we shall have to start again from the beginning as it doesn’t look like there is an alternative.”

The Tribunal wrote again by email of 17 July 2024 seeking confirmation that the application was being withdrawn. No response was received.

### **Reasons for Decision**

3. 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."*

4. Rule 109 of the Tribunal Procedure Rules provides:

**Application for an eviction order**

**109.** Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant (if known); and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction 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; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(iv)a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

(c)be signed and dated by the landlord or a representative of the landlord.

The Applicant has failed to provide necessary information. The Tribunal could not grant the order sought.

5. The Tribunal consider that there is good reason why the application should not be accepted. 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.

# Alan Strain

26 August 2024

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Legal Member/Chair

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Date