

**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/24/2410**

**Re: 15 Robert Street, Arbroath, DD11 3AT ("the Property")**

**Parties:**

**Bellrock (Scotland) LTD ("the Applicant")**

**Wardhaugh Property ("the Applicant representative")**

**Christopher George Robb ("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 rejected on the basis that the Tribunal has good reason to believe it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.**

**Background**

1. The application was received by the Tribunal under Rule 109 on 28<sup>th</sup> May 2024 with associated documents. The Applicant was seeking an eviction order.
2. The Applicant representative lodged a Notice to Leave dated 24<sup>th</sup> April 2024, with the date in part 4 stated as 24<sup>th</sup> May 2024. The Tribunal requested further documentation, including evidence of the method of service of the Notice to Leave upon the Respondent.
3. In response to the request for further information, the Applicant representative stated that they were lodging evidence of service of the Notice to Leave upon the Respondent, however, the email lodged appeared to have been sent to a representative of the Applicant dated 24<sup>th</sup> April 2024 with the heading 'Notice to Leave'. No evidence of an email sent to the Respondent was lodged.
4. Despite a request for clarification from the Tribunal, no further clarification was provided by the Applicant representative, and a reminder allowing further time to submit the requested clarification and documentation was not responded to.

## 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 Tribunal determined that the application should be rejected in terms of Rule 8(c) on the basis that the Tribunal has good reason to believe it would not be appropriate to accept the application.

## Reasons for Decision

7. In terms of section 52(3) of the Private Housing (Tenancies (Scotland) Act 2016 ("the Act") and Rule 109, an application must be accompanied by a copy of the Notice to Leave. The Notice to Leave must be valid and conform to the requirements of section 62 of the Act, by specifying the date on which the landlord expects to become entitled to make an application for an eviction order to the First-tier Tribunal. In the absence of any evidence of service of the Notice to Leave, the Tribunal cannot be satisfied that the correct period of notice was provided to the Respondent. If the Notice to Leave was served by email, as suggested by the Applicant representative providing a copy of an email, albeit sent to the Applicant, rather than the Respondent, on 24<sup>th</sup> April 2024, the date to be inserted at part 4 would be 25<sup>th</sup> May 2024. The failure to insert the correct date at part 4 would render the Notice to Leave invalid.
8. The Tribunal considered whether section 73 of the Act may be of assistance and whether the error in completion of the document materially affected the effect of the document. In the Tribunal's view, the error in completing part 4 affects the effect of the Notice to Leave, as the Notice to Leave does not give the Respondent the correct date on or after which an application could be submitted to the Tribunal.

9. The Tribunal has good reason to believe it would not be appropriate to accept the application. The application is 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

**Legal Member/Chair**

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**11<sup>th</sup> September 2024**  
**Date**