

**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/24/2582**

**Re: 10 Ellisland Place, Saltcoats, KA21 6ED ("the Property")**

**Parties:**

**Kathleen McCallum ("the Applicant")**

**Ayrshire Lettings & Sales ("the Applicant representative")**

**Richard Kelly ("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 application is frivolous in terms of Rule 8(1)(a) of the Procedural Rules, and 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 5<sup>th</sup> June 2024 with associated documents. The Applicant was seeking an eviction order under grounds 1 and 11.
2. The Applicant representative lodged *inter alia* a Notice to Leave dated 31<sup>st</sup> January 2024, with the date in part 4 stated as 31<sup>st</sup> March 2024. Following repeated requests for further information, including representations as to the validity of the Notice to Leave, given the period of notice appeared to be short, the Applicant representative did not respond.
3. The Applicant representative did not lodge a section 11 notice as required by section 56 of the Private Housing (Tenancies (Scotland) Act 2016 ("the Act") and Rule 109 of the Procedural Rules. The Applicant representative did not respond to repeated requests for this document.

## Decision

4. 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."*

5. On consideration of the above test, the Tribunal considers that this application is frivolous, misconceived and has no prospect of success. The Tribunal also determined that the application should be rejected in terms of Rule 8(c) on the basis that there is good reason to believe it would not be appropriate to accept the application.

## Reasons for Decision

6. 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. The Notice to Leave was not valid as the date inserted at part 4 provided a period of notice of two months. The correct period of notice for a ground 1 application is 84 days, with a period of 48 hours allowed for service by email or recorded delivery.
7. 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.
8. Section 56 of the Act provides that a landlord may not make an application to the First-tier Tribunal 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. No evidence of compliance with this provision was lodged.

9. Given that the Notice to Leave is invalid, and no section 11 notice has been lodged, the application is frivolous and 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.**

# H Forbes

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**Legal Member/Chair**

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