



**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/24/1775

**Parties**

**Mr Liaquat Ali (Applicant)**

**Mr Muhammed Shah (Respondent)**

**31 Mossgiel Terrace, Lauriston, Falkirk, FK2 9HY (House)**

1. On 22.4.24 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable cases 10, 8, 15 and ground 11. The applicant stated the house was overcrowded, the landlord required the property for his family to live in, the property was rented on a short tenancy which has terminated and the tenant had breached the conditions of the tenancy.

2. The application was accompanied by a Notice to Leave dated 21.6.23 with a date in part 4 stated as 31.8.23 for ground 5 only and a further Notice to Leave document dated 24.1.24 with a date in part 4 stated as 1.3.24 and issued on grounds 5 and 11. The applicant had provided the tenancy agreement showing the tenancy commenced on 15.8.21 and a recorded delivery receipt dated 25.1.24. No other documents were provided.
3. The FTT wrote to the Applicant on 4 occasions (14.5.24, 1.7.24, 9.8.24 and 23.8.24) requesting further information. The information requested was: 1. Please clarify your reference to cases 10, 8 and 15. The only two grounds included in the notice to leave were grounds 5 and 11 stated in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. In terms of S 52 (5) of the said legislation an application can only be made on the basis of grounds contained in the notice to leave or with permission of the Tribunal. If you wish to include any additional grounds other than grounds 5 and 11 you will have to specify why and how these are met and why it was not possible for you to include these in the notice to leave at the time this was sent. The Tribunal would then consider a request to include additional grounds at the Case Management state if the application is accepted as valid. Please confirm exactly which grounds you are basing your application on. 2. It appears the application is not valid because the notice to leave has not given the tenant the required 84 days notice. You state the date on the notice to leave as the notice being dated 24.1.24 and the date when proceedings can first be raised at 1.3.24. Ground 5 requires the landlord to give the tenant 84 days notice. S 54 (3) of the Act specifically states that the shorter notice period of 28 days only applies if the ONLY ground for a notice to leave is one of the grounds listed in S 54 (3) (b). Because you have stated ground 5 on the notice to leave, the notice period thus has to be 84 days. The notice period given on the document was 34 days only. Please make representations as to how you consider this can possibly be a valid notice to leave or, if you agree that in terms of sections 54 and 62 of the 2016 Act the notice to leave was not issued correctly, consider withdrawing the application, serving a fresh notice to leave with the appropriate notice period and raising a fresh application once you have done so. Please advise in writing how you wish to proceed. You may wish to obtain legal advice on the matter. 3. You have not provided the notice to the local authority in terms of S 56 of the Act. Without this and

proof when and how this was given to the local authority the application remains incomplete. 4. With regard to ground 5 please provide evidence that the ground applies. The legislation states: (7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention. 5. With regard to ground 11 please provide evidence that this ground applies and state the clause of the tenancy agreement the tenant is alleged to have breached. 6. Please provide the delivery receipt for the notice to leave issued to the tenant.

4. The Applicant did not provide the information requested.
5. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

6. 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."*

- 7. 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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

### **REASONS FOR DECISION**

1. The lodging requirements for an application under rule 109 (b) include the requirement to lodge (i) evidence that the 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, (iii) a copy of the notice given to the local authority under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act
2. S 52 of the Act states that an application for eviction must be accompanied by a copy of a notice to leave which has been given to the tenant. Although a Notice to Leave document was provided, this would not be valid as it did not provide the tenant with the notice period of 84 days required for ground 5 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
3. The Notice to Leave document from 2023 could not be relied on in an application made on 22.4.24 due to the time limit of 6 months stated in s 55 of the Private Housing (Tenancies) (Scotland) Act 2016, which had expired in January 2024.
4. S 56 of the Act specifies that a landlord may not make an application to the FTT 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 and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents.
5. The applicant has not provided any documentary evidence to support the application of grounds 5 and 11 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

6. The applicant has not provided an explanation of the grounds and cases quoted in the application, which do not correspond to the grounds 10, 8 and 15 stated in the application or in schedule 3 of the said Act.
7. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in the 2016 Act as set out above.
8. Because the application at present does not fulfil the lodging criteria stated in the relevant rule it is rejected as it would not be appropriate for the FTT to accept an incomplete application.
9. For the avoidance of doubt, this decision does not prevent the Applicant lodging a fresh application once he has all the necessary documentation available.

### **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

18 September 2024