



**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/24/3913

**Parties**

**Mrs Margaret Campbell (Applicant)**

**Ms Sarah Farrell Harvey (Respondent)**

**Mrs Orinda Elliott (Applicant's Representative)**

**13 Durness Court, Glenrothes, Fife, KY6 2BJ (House)**

1. The application for an eviction order in terms of Rule 109 of the Procedural Rules was received by the First –tier Tribunal for Scotland, Housing and Property Chamber (the FTT) on 23.8.24.
2. The documents lodged with the application were: a copy of a tenancy agreement between Margaret Campbell as the landlord and the Respondent commencing on 13.4.19 and a copy of a document headed notice to leave issued under ground 1 dated 29.2.24 with the date of 21.5.24 as the date when the occupier is asked to

leave. This was a one page document and not the form specified in schedule 5 of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended. The Applicant, is described as Margaret Campbell, deceased. No address for her is provided. The Representative is described as Orinda Elliott. There was no S 11 notice but Mrs Elliott had included an email to the local authority, copying the document headed Notice to Leave.

3. On 26.8.24 the FTT wrote to the applicant requesting the following information by 2.9.24: "1. evidence showing that the eviction ground or grounds has been met; 2. a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act 3. evidence of the notice given to the local authority as required under section 56 (1) of the 2016 Act being provided to the local authority Please reply to this office with the necessary information by 2 September 2024, otherwise the application may be rejected."
4. On 30.8.24 Mrs Elliott sent the following reply: "You have asked that I provide evidence showing that the eviction grounds have been met, my mother was the landlord of this property ( Mrs Margaret Campbell, landlord reg no 506894/250/06092) my mother passed away on the 2nd Oct 2021 and my 3 siblings and I inherited the property. Since then my brother has also passed away and consequently we have no choice but to sell the property in order that his estate can be settled and the monies from the house be divided up. I have attached a copy of my mother's death certificate. I contacted Fife Council and spoke to Helen MacNeil, Housing Options Officer, she emailed confirmation that she has received the Notice to Leave issued for Sarah Farrell at 13 Durness Court. I hope this is what you require to process my application.."
5. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

1. 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."*

2. 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.

### **Relevant Legislation**

#### **Application for civil proceedings in relation to a private residential tenancy**

#### **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; 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

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

## **REASONS FOR DECISION**

1. S 56 of the 2016 Act specifically states “A landlord may not make an application to the First-tier Tribunal for an eviction order against the 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. Notice under subsection (1) is to be given in the manner and form prescribed under section 11 (3) of the Homelessness etc. (Scotland) Act 2003. “ The required notice has not been provided and thus the requirement for a valid application to the FTT set out in S 56 of the 2016 Act has not been complied with. In terms of Rule 109 (b) (iii) the application must be accompanied by the notice given to the local authority as required under section 56 (1) of the 2016 Act. This is a formal document and has to contain the information set out in the Notice to Local Authorities (Scotland) Regulations 2008 and the amendment regulations 2017. A copy of a notice to the tenant does not meet the requirements of the Regulations. Thus a S 11 was not provided.
2. The FTT had given the applicant the opportunity to lodge the missing documents. These have not been lodged.
3. Rule 109 (b) (ii) requires that the Applicant is accompanied by a copy of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act. The Applicant has provided a document described as a Notice to Leave. The Tribunal considers that what is required in terms of rule 109 (b) ii is a valid Notice to Leave as defined in S 62 of the Act. S 62 (1) (d) requires the notice to fulfil any other requirements prescribed by Scottish Ministers. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended set out the format and information necessary for a Notice to Leave. The notice sent by the Applicant is not on the prescribed format and does not give the information stated in the statutory form regarding advice and notice periods and does not provide the statutory information required in part 4 of a Notice to Leave. It is not the Notice to Leave document required in terms of S 52 of the 2016 Act and does not meet the lodging requirement of rule 109 (b) (ii).
4. Although this had not been raised with the Applicant by the FTT, it is also not possible for a deceased person to be an Applicant and any future application will require one of the Executors to apply in that capacity and to evidence their authorisation to act for the estate.

A death certificate is insufficient for this purpose and Confirmation of the Executor would be required.

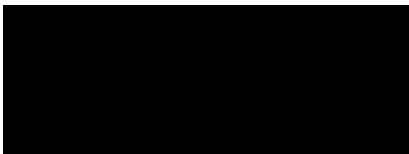
5. Given that the application does not fulfil the lodging criteria for an application of that nature in terms of Rule 109 of the Procedure Rules, it would not be appropriate for the Tribunal to accept the application.
6. This will not prevent the Executors of the late Mrs Campbell to make a fresh application once all the necessary documents are available. They may wish to seek legal advice to ensure that any future application meets the lodging criteria as set out in the Rules of Procedure.
7. This application it is rejected for the reasons set out above.

### **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 McFatrige  
Legal Member  
25 September 2024