



**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/24/4048

**Parties**

**Mr David Whitten (Applicant)**

**Julia Logue (Respondent)**

**133 Drumoyne Road, Glasgow, G51 4BA (House)**

1. On 31.8.24 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 ground 1 of schedule 3 of the 2016 Act. The Applicant stated he wished to sell the property.
2. The application was accompanied by a Notice to Leave dated 27.8.24 with a date in part 4 stated as 31.8.24, a Notice to Quit document and a copy of the tenancy agreement commencing 13.6. 20.
3. The FTT wrote to the Applicant on 3.9.24 requesting a copy of the S 11 notice and

evidence this had been given to the local authority and evidence of how and when the Notice to Leave was served on the tenant.

4. On 8.9.24 the Applicant provided another copy of the tenancy agreement and the Notice to Leave together with a letter from a solicitor regarding sales instructions for the property. He stated he copied the letting agent into the email as they can provide evidence of the notice being issued to the local authority.
5. On 11.9.24 the Applicant sent a further email stating he attached the email from the letting agent with proof of the notice being issued. The attachment to said email were a further copy of the tenancy agreement, the Notice to Leave, the Notice to Quit and the letter from the solicitor.
6. Buy 16.10.24 no S 11 notice, proof of service of the Notice to Leave and proof of service of the S 11 notice had been provided.
7. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

8. 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."*

- 9. 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 was not correctly completed and there is no evidence it was served.
3. The date of 31.8.24 in part 4 does not take into account the requirement stated in S 62 (4) of the Private Housing (Tenancies) (Scotland) Act 2016, which requires the date stated to be the date after the day on which the notice period defined in section 54 (2) will expire. The correct date in this case would be 22.11.24. Whilst there is reference in the Notice to Leave in part 4 that 22.11.24 is the date the notice expires, this is not stated and taken into account in the part of the notice where the date when proceedings can be commenced has to be entered. It is not clear to the recipient what the relevance of the date of 22.11.24 would be in the context of where it was placed on the notice.
4. The Tribunal has considered whether S 73 of the Act may be applicable in this case to assist the applicant. This states: (1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.
5. In the Tribunal's view, the word "effect" in section 73 (and in the explanatory note) denotes the effect the notice is intended to have if it is completed without error. It follows from section 62(1)(b), (c) and (d) that a notice to leave completed without error will give the

tenant certain information, namely: 1. the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the FTT, being the day after the notice period expires (section 62(1)(b)). This date is stated in part 4 of the prescribed form, in which the tenant is expressly advised that “An application will not be submitted to the Tribunal for an eviction order before [the date]”, 2. The eviction ground on which the landlord intends to seek an order (section 62(1)(c)), which is indicated by ticking the appropriate box in part 3 of the prescribed form, 3. Details and evidence of the eviction ground (section 62(1)(d) and part 3 of the prescribed form, 4. The tenant’s details (section 62(1)(d) and part 1 of the prescribed form), 5. The name, address and telephone number of the landlord or his agent (section 62(1)(d) and part 2 of the prescribed form). All these parts of the form require to be completed.

6. In the Tribunal’s view, an error in completion “affects the effect” of the notice to leave if, as a result of the error, the notice does not give the tenant that information. In this case, the error clearly “affects the effect” of the notice to leave, because a correct notice would have informed the Respondent of the correct date on or after which an application to the Tribunal could be submitted. That was not done.
7. The notice should, at the very least, correctly inform the tenant of the “why” (the statutory ground) and the “when” of the proceedings that the landlord anticipates raising.
8. To state an earlier date than the date on which, in terms of the Act, the landlord is entitled to raise proceedings is not, in the view of the Tribunal, “an obviously minor error” which could then be dealt with in terms of S 73 of the Act by the Tribunal. It is an error which causes the notice to fail in achieving one of its fundamental purposes.
9. For these reasons, the Tribunal finds that, in terms of section 73, the error of stating “31.8.24” in part 4 of the notice to leave materially affects the effect of the notice and makes it invalid. It is not a “notice to leave” under section 62. Therefore, the document which accompanied the application to the First-tier Tribunal was not, for the purposes of section 52(3), “a copy of a notice to leave”, and accordingly, given section 52(2)(a), the Tribunal cannot entertain the application.
10. The Tribunal considered whether S 52 (4) of the Act could be of assistance to the Applicant. All S 52(4) allows is to consider an application made in breach of S 54 if it considers it is reasonable to do so. However, stating the wrong date in the Notice to Leave is not a breach of S 54 but a breach of S 62 (1) (b), which prescribes the information to be included in the Notice to Leave. Had the Notice to Leave stated the correct date but had the application been made before that date, then the Tribunal could have considered whether it would have been appropriate to consider the application made e.g. due to time pressure because of antisocial behavior. S 54 relates, as the title states, to “Restriction on applying during the notice period” and it is only a non compliance with that which the Tribunal has discretionary power to consider. The breach in this case is not of S 54 but of S 62. The Tribunal has no discretionary power to entertain this application as the date stated in the Notice to Leave had been wrongly stated in terms of that provision. As stated above, the only other power potentially applicable, that in S 73, does not apply in this case.

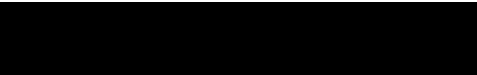
11. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice 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 despite the FTT having requested it.
12. Finally, as set out above, the application was made 4 days after the date of the Notice to Leave and with a notice period of 84 days significantly before the notice period would expire. No explanation in terms of S 52 (4) of the Act was provided why the application should be acceptable before the expiry of the notice period. The application is premature.
13. 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.
14. 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.
15. For the avoidance of doubt, this decision does not prevent the Applicant lodging a fresh application once he has all the necessary documentation available, which would have to include a correctly completed Notice to Leave.

### **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  
16.10 2024