



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/EV/24/1195**

**40AA Friar Street, Perth, PH2 9ED ("the Property")**

**Parties:**

**JGC Investments ("Applicant")  
Lettings Direct ("Applicant's representative")  
Marie Heiszova ("Respondent")**

**Tribunal Member: Ruth O'Hare (Legal Member)**

**Decision**

**The Tribunal rejects the application by the Applicant received by it on 13 March 2024 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules").**

**Background**

- 1 On 13 March 2024 the Applicant submitted an application under Rule 109 of the Rules. The Applicant sought an eviction order under ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 2 The application was reviewed by a Legal Member of the Tribunal with delegated powers from the Chamber President. On 16 April 2024 the Tribunal wrote to the Applicant's representative in the following terms:-

*"Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member responds as follows:*

*1. The landlord in the lease is Bonhard Investments. Please explain on what basis the Applicant has right, title and interest to let the Property and pursue this matter.*

*2. The tribunal note that Mr John Cumming is deceased. Please confirm whether or not you are acting for his executors and provide written authorisation from them for you to act.*

3. Please confirm the date the Notice to Leave was delivered to the Respondent and by whom.

4. Please provide proof of service of the section 11 Notice on the local authority.

5. Please provide evidence in support of the Ground relied upon such as signed terms of engagement with a solicitor or estate agent. Please provide the information requested within 14 days failing which the application may be rejected.”

- 3 On 23 April 2024 the Applicant’s representative emailed the Tribunal with a response to the request for information. They advised that “*Bonhard Investments were a group of landlords. This has now ceased, and the company is now JGC Investments. Mr Garry Cumming is deceased not John Cumming*”. The Applicant’s representative confirmed that they managed the property on behalf of the Applicant and the Respondent had been given notice when Garry Cummings fell ill and wanted to sell the property.
- 4 On 15 May 2024 the Tribunal requested further information from the Applicant’s representative. The Tribunal noted that they had failed to provide the information requested regarding the notice leave, and that serving by posting through a letterbox was not an acceptable method of service in terms of the legislation. The Tribunal suggested the Applicant may wish to withdraw the application and send a further notice to the Respondent. The Applicant was advised to take advice on this matter. The Tribunal further advised that the evidence to support the ground for possession was insufficient and the owner noted in the title deeds was deceased. It was therefore unclear as to how the Applicant had right, title and interest to make the application. A response was requested by 29 May 2024.
- 5 On 22 May 2024 the Tribunal received a response from the Applicant’s representative. They submitted a photograph of a letter being posted through a letterbox and confirmed that they would not be withdrawing the application. They went on to restate what had been said in their response of 23 April 2024 regarding the Applicant’s title to bring the application.
- 6 On 9 June 2024 the Tribunal wrote again to the Applicant’s representative in the undernoted terms:-

*“The registered proprietor of the property is Garry Cumming, who is deceased. The landlord noted in the tenancy agreement is Bonhard Investments. We need to know what the link is between Garry Cumming and Bonhard Investments. Did Garry Cumming authorise Bonhard Investments to let the property? Can someone from Bonhard Investments provide a statement about that? Even if Bonhard Investments were authorised to let the property, neither Bonhard Investments nor JGC Investments is entitled to sell the property, because it is still registered in the name of Garry Cumming. Please advise whether the executor of the estate has applied for confirmation of Mr Cumming’s estate and provide evidence of that. The property cannot be sold unless confirmation of the deceased’s estate has been obtained.”*

The Applicant's representative was asked to provide a response within 14 days.

- 7 On 17 June 2024 the Applicant's representative emailed the Tribunal with an email from Wyllie and Henderson Solicitors to Julie Cumming confirming that they had obtained confirmation for the estate of Garry Cummings. The Applicant's representative sent a further email that same day with a copy of the confirmation.
- 8 On 11 July 2024 the Tribunal wrote to the Applicant's representative in the following terms:-

*"You have applied under Section 51 of the Private Housing (Tenancies) Scotland Act 2016 and Rule 109 of the Tribunal Rules. The supporting information which have submitted does not meet the requirements of the legislation. You must deal with the following or your application is likely to be rejected:*

*1. You have submitted an application showing JGC Investments to be the Applicant. You have submitted a copy of the tenancy agreement which shows Bonhard to be the landlords. You have stated that Bonhard has ceased and the JGC is now in place. You have provided no evidence to confirm this.*

*2. You have been advised that the title to the Property is in the name of Garry John Cumming. You have submitted a death certificate for Mr. Cumming. You have also submitted an Extract Confirmation in Mr. Cummings estate which lists the Property in the Inventory and shows that the Executors are Julie Cumming and Wylie Henderson Trustees Limited. You have not provided any links in title between the late Mr. Cumming or his Executors and the two companies noted above.*

*3. Following on from the above, you have not provided any evidence to show that JGC Investments are entitled to make the application and that you are authorised to act for them.*

*4. You have been asked to provide proof of that the notice to leave was given to the tenant by the landlord as required by section 52 (3) of the 2016 Act. You have sent a photograph of a letter and a mail box. You have not provided any evidence to link this to the proper sending of the notice to leave.*

*5. You have been asked to provide evidence showing that the eviction ground has been met;*

*6. You have been asked to provide evidence that the notice required under section 56 (1) of the 2016 Act has been received by the local authority.*

*You must either provide sufficient information to support a valid application by 25 July 2024 or consider withdrawing the application. The application cannot be accepted in its current form and the tribunal cannot provide any further assistance. You are advised to take legal advice."*

9 The Tribunal received no response from the Applicant's representative. The Tribunal sent reminders to the Applicant's representative on 16<sup>th</sup> August 2024 and 9 October 2024, reiterating that in the absence of a response the application would be rejected. No further information was received from the Applicant's representative.

### **Reasons for Decision**

10 The Legal Member considered the application in terms of the Rules and determined that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to provide the further information requested by the Tribunal under Rule 5(3) of the Rules which is necessary to meet the required manner for lodgement. The Applicant's representative has been asked for the information on several occasions. The Applicant's representative has been advised of the potential defects with the application and has failed to satisfy the Tribunal that these can be remedied. Accordingly the Legal Member has concluded that the application cannot be accepted in its current form and must be rejected under Rule 8(1)(c).

**NOTE:** What you should do now.

If you accept this decision there is no need to reply. If you disagree with this decision you should note the following: A party aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

**Ruth O'Hare, Legal Member**  
**22 November 2024**