



**DECISION AND STATEMENT OF REASONS OF FIONA WATSON, 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 Rules")**

in connection with

30 James Murdie Gardens, Hamilton, ML3 0RT ("the Property")

Case Reference: FTS/HPC/EV/24/1155

Mr Sachin Patel, 9 Mossbeath Crescent, Glasgow, G71 7UY ("the Applicant")

Mrs Ashley Russell, 30 Murdie Gardens, Hamilton, ML3 0RT ("the Respondent")

1. The Applicant seeks a repossession order in terms of Rule 109 of the Rules. The Applicant lodged the following documents alongside the application:
 - (i) Copy Tenancy Agreement
 - (ii) Copy Notice to Leave and evidence of service
 - (iii) Rent statement
 - (iv) S11 notice to South Lanarkshire Council and evidence of service

DECISION

2. The Legal Member 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;

(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.

3. After consideration of the application and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that they have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Rules.

Reasons for Decision

4. Emails were sent to the applicant on 5 April 2024, seeking further information from the Applicant as follows:
 - (i) “Please clarify the spelling of the applicant for CV/24/1159. This is stated as Neila Sarwar on the application, as Niela Sarwar on the landlord register and title

deeds but as Nyla Sarwar on the tenancy agreement.

- (ii) Please for both cases, as there is a joint heritable proprietor, either advise if you wish to add the respective joint owner as second applicant or provide a letter from both owners that they are content to have the applications made in the name of only one joint owner (as it is stated on the applications). The EV/24/1155 case states only Mr Patel as the applicant.
- (iii) Please provide a written authorisation from both applicants for the agent to act on their behalf in the proceedings before the Tribunal.
- (iv) Please clarify why there is only one respondent mentioned in both applications although the tenancy agreement refers to two tenants. For the eviction case EV/24/1155 :for a joint private residential tenancy the order can only be made against “the tenant” as defined in S 78 (3), which states: “In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise”. Please either add the second tenant or provide an explanation as to why the applications both are made only against Ashley Russell.”

5. The Applicant's representative replied by email of 23 April 2024 providing comment on each of the four points set out at paragraph 5 above, but did not provide sufficient information to each of points 1 and 4 to enable the application to proceed. This information was again requested by emails of 23 May 2024 and 4 July 2024. Following a request for an extension by the Applicant's representative to provide this information, this extension was granted to 10 August 2024. Full information was not provided.
6. On 9 September 2024, the Tribunal again asked for further information relating to point (iv) of paragraph 5 above. The Tribunal stated that “*we note that the joint tenant is no longer residing at the property. Can you please confirm if he signed the tenancy over to the Respondent upon vacating the property and provide any evidence of this, if available. If he did not do so then it is likely that he will have remained a tenant under the terms of the tenancy agreement between the parties and you will require to serve him with a notice to leave. If you have not done so then please consider withdrawing the applications and resubmitting once the notice to leave has been served on both tenants as it is likely that your applications for an eviction order will have to be rejected.*”
7. This request was not responded to. A further request was sent on 30 October 2024. This was again not responded to. The application is therefore lacking in specification as to the question of whether or not the tenancy remains a joint tenancy and whether or not the required Notice to Leave has been served on all interested tenants.
8. The Legal Member therefore determines that there is good reason to believe

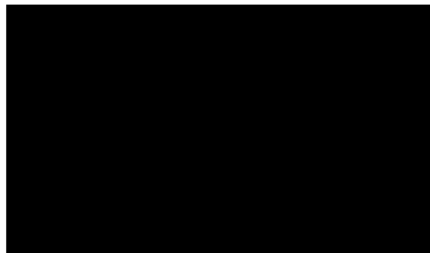
that it would not be appropriate to accept the application. The application is rejected on that basis.

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 the appeal procedure can be forwarded to you on request.



16 December 2024