



**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/24/3941

**Parties**

**Fixrole Limited (Applicant)**

**Ryan Marshall (Respondent)**

**Pavillion Properties (Applicant's Representative)**

**Flat 3/1, 9 Malcolm Street, Dundee, DD4 6SF (House)**

1. On 27.8.2024 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which indicated as the relevant rule 109. Rule 109 relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act). The applicant thereafter produced a tenancy agreement, the S 11 notice and proof of sending same, a rent statement, a pre action requirements letter dated 23.2.2024

and a recorded delivery receipt dated 11.7.2024. He did not provide a Notice to Leave. The Ground for the application stated on the application was ground 12 of schedule 3 of the 2016 Act.

2. The application stated that it was lodged accompanied by a Notice to Leave. This was not provided. The FTT wrote to the Applicant's representative on 3 occasions asking for the Notice to Leave to be lodged. This was on 23.9.2024, on 29.10.2024 and finally on 18.12.2024, which gave as the date by which a reply was required 1.1.2025. Whilst other documents had been provided by email dated 26.9.2024 following the initial request on 23.9.2024, since then no reply has been received and no copy of the Notice to Leave has been lodged.
3. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

4. 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."*

- 5. 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.
3. Despite repeated requests to produce the Notice to Leave document it has still not been produced. The application does not meet the lodging requirement of rule 109 (b) (ii) of the Rules of Procedure. The Applicant had been asked to provide this document and has not replied to the last two letters from the FTT.
4. 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.
5. The application is thus rejected.

### **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.

# P Hennig-McFatridge

Petra Hennig McFatridge  
Legal Member  
11 February 2025