



**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/24/4473**

**9 (3/2) Arkley Street, Dundee, DD3 7PG ("the Property")**

**Parties:**

**Joanna Gibbings ("Applicant")  
Front Row Lettings ("Applicant's representative")  
Raymond Hamilton ("Respondent")**

**Tribunal Member: Ruth O'Hare (Legal Member) with delegated powers from the Chamber President**

**Decision**

The Tribunal rejects the application by the Applicant received by it on 25 September 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 The Applicant submitted an application under Rule 65 of the Rules seeking an eviction order against the Respondent. At the same time the Applicant submitted a separate application under Rule 111 of the Rules seeking a payment order against the Respondent in relation to unpaid rent arrears. The two applications were conjoined as they related to the same parties and the same tenancy.
- 2 Following review of the application by a Legal Member of the Tribunal, the Tribunal wrote to the Applicant's representative in the following terms:-

*"A Legal Member of the Tribunal has now considered your two applications and has requested the following:-*

- 1. A signed mandate from the Applicant authorising you to deal with this Tribunal application on her behalf.*
- 2. A copy of the tenancy agreement.*

3. In relation to the payment application, it is noted that the sum claimed is £4,269.05 but that the rent statement produced shows a balance owing in rent arrears of £2,915.60 as at 1/9/24. Please either amend the application and re-submit or produce proof that the sum of £4,269.05 is owing.

4. In relation to the eviction application, it is noted that the start date of the tenancy stated in the Section 11 Notice to the local authority is stated as 25 August 2017 but in the Notice to Leave the start date is stated as 1 March 2023. If it is the earlier date that is correct, then the application has been brought under the correct rule (Rule 65) as it would then be an Assured Tenancy under the 1988 Act. If, however, the later date is correct, then the 2016 Act applies and the tenancy is a Private Residential Tenancy and the application should have been brought under Rule 109.

5. A Notice to Leave is only valid in respect of a Private Residential Tenancy. Different Notices must be served under the 1988 Act (Notice to Quit/AT6) so if this is an Assured Tenancy, the wrong notice has been served and you may require to withdraw this application, serve fresh notice and then re-submit a fresh application once the relevant notice period has expired.

6. Please provide evidence of the method and date of service of both the formal notice(s) served on the Respondent and the Section 11 notice served on the local authority, such as postal receipts or covering emails.

7. The Notice to Leave is unsigned and undated.

8. Eviction Ground 8A stated in your application only applied in relation to an Assured Tenancy under the 1988 Act and is no longer available as a ground for eviction in respect of notices served after 1 March 2024. If this is a Private Residential Tenancy, Ground 8A is not an applicable ground. There are other rent arrears grounds available in respect of both the 1988 Act and the 2016 Act.

The Legal Member recommends that you may wish to obtain legal advice in relation to these matters before deciding how to proceed. Please note that the Tribunal cannot provide legal advice to parties.

Please confirm your position in relation to both applications, answering the above points, within 21 days. Please note that, if the eviction application is to be withdrawn and resubmitted, the payment application could still proceed at this time, provided you deal with points 1,2 and 3 above.

Please reply to this office with the necessary information by 25 November 2024. If we do not hear from you within this time, the President may decide to reject the application.”

- 3 The Applicant’s representative did not respond. On 19 December 2024 the Tribunal wrote again to them by email noting the lack of response. The Tribunal advised that the applications could not proceed without the requested information. The Applicant’s representative was asked to respond no later than 2 January 2025, failing which the application may be rejected.

4 No further response was received from the Applicant nor their representative.

### **Reasons for Decision**

5 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 information requested by the Tribunal under Rule 5(3) of the Rules which is necessary to meet the required manner for lodgement. The Tribunal has identified defects with the application which have not been addressed by the Applicant. Her representative has been asked for a response on two occasions. They have been advised that in the absence of a response the application may be rejected. 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.

# R O'Hare

**Ruth O'Hare, Legal Member**  
**12 February 2025**