



**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/24/4142

**Parties**

**Mr James Haycock (Applicant)**

**Ms Jade Legge (Respondent)**

**42 Maxwell Crescent, Cowdenbeath, Fife, KY4 9RA (House)**

[1] The application under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was lodged by the applicant with the First-tier Tribunal, Housing and Property Chamber (FTT) by email on 5.9.2024. The application was accompanied by a document headed Private Residential Tenancy Agreement between the parties commencing on 1.8.2023 for a nil rent sum, a S 11 notice to the local authority, an undated and unsigned Notice to Leave document based on ground 1 giving as the date in part 4 31.8.2024 and some correspondence which appeared to be between the applicant and the local authority in which the applicant confirms that the agreement was

that the respondent would not be paying rent for the property because she is the applicant's step daughter. The ground stated in the application was ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

[2] On 16.10.2024 the FTT wrote to the applicant requesting further information in the following terms: *"Before a decision can be made, we need you to provide us with the following: 1. The tenancy agreement has the rent as nil. If no rent is payable the tenancy cannot be a private residential tenancy and the application cannot proceed. If this the case please withdraw the application failing which it will be rejected. 2. The notice to leave provided is not valid as it is not signed and dated and the notice period cannot be calculated. Please provide a copy of a valid notice to leave. 3. We asked you to provide proof of service of the notice to leave but you have failed to do so. The tenancy agreement provides for service by email but the information you have provided suggests that personal service may have been used. Please tell us how the notice to leave was served and if email was not used please provide evidence of an agreement to use an alternative method of service. 4. Please provide evidence of the eviction ground. You have told us that you are leaving army accommodation. Please provide evidence of this. Please note that the tribunal are unable to provide legal advice and you may wish to seek your own independent legal advice in connection with this matter. Please reply to this office with the necessary information by 30 October 2024. If we do not hear from you within this time, the President may decide to reject the application."*

No reply was received.

On 11.12.2024 the FTT again wrote to the applicant in the following terms: *"It is noted that you have failed to provide the further information initially requested by email dated 16 October 2024. We now write to advise you that if you fail to provide this information within the next two weeks the tribunal will have no option but to reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations."*

Again, no reply was received.

[3] All file documents are referred to for their terms and held to be incorporated herein

brevitatis causa.

## 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."*

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 FTT has good reason to believe that it would not be appropriate to accept the application.

## REASONS FOR DECISION

### Reasons:

[5] The application was made in terms of rule 109 of the Rules of Procedure. Rule 109 relates to applications relating to Private Residential Tenancies in terms of the Private Housing (Tenancies) (Scotland) Act 2016. A Private Residential Tenancy is defined in the 2016 Act S 1 as follows:

#### **1 Meaning of private residential tenancy**

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

Schedule 1 of the 2016 Act states as follows: **Low Rent**

1(1) A tenancy cannot be a private residential tenancy if—

(a) it is a tenancy under which rent of, or equivalent to, less than £6 a week is payable, and

(b) it has not previously acquired the status of a private residential tenancy or been an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.

(2) In determining the rent payable for the purpose of sub-paragraph (1), no account is to be taken of any amount paid by the tenant in respect of services, repairs, maintenance or insurance.

The applicant has confirmed that no rent was payable for the property. The property is thus not let under a Private Residential Tenancy and rule 109 cannot apply. The application was made under the incorrect rule and no explanation was provided regarding which other type of tenancy might be relevant and establish jurisdiction for the FTT.

The FTT had given the applicant two opportunities to make further representations and to clarify the situation. He has not done so.

[6] Even if the tenancy had been a Private Residential Tenancy, the application would not have been validly made:

In terms of Rule 109 of the Procedural Rules an application must “(a) state:

- i. the name, address and registration number (if any) of the landlord
- ii. the name, address and profession of any representative of the landlord,
- iii. the name and address of the tenant, and
- iv. the ground of eviction,

(b) be accompanied by –

- i evidence showing that the eviction 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, and
- iii a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act, and

(c) be signed and dated by the landlord or a representative of the landlord.

A valid application under rule 109 would require a Notice to Leave to be lodged with the application. The notice lodged is not a valid Notice to Leave as required by S 52 (3) of the Act because it is not signed and dated and from the information provided it cannot be established that it provided the correct notice period of 84 days for a Notice to Leave under ground 1 of schedule 3 of the 2016 Act. Thus the application was lodged without the document required for lodging as stated in rule 109 (b) (ii) of the Rules of Procedure. The applicant had been given two opportunities to verify the date of service and stated on the served document and has not done so.

It would not be appropriate for the Tribunal to accept an application which does not meet all the lodging requirements stated in rule 109, in particular here in rule 109 (b) (ii).

[7] Furthermore the applicant had been written to by the FTT on two occasions when further information was requested and did not reply. The letters did contain the warning that if not reply was received the application may be rejected. It is disappointing that in these circumstances the

applicant did not provide a reply to the FTT or advise the FTT that the application was no longer being pursued. The applicant did not provide a reply and appears to have abandoned the application.

[8] For the reasons stated above 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

5 February 2025