



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/24/5131

6 Chapel Street, Forfar, DD8 2AB ("the Property")

Parties:

Michael Voice ("Applicant")

Pavillion Properties ("the Applicant's representative")

Daniel Cormie ("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 7 November 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 109 of the Rules and section 51 of the Private Housing Tenancies (Scotland) Act 2016 ("the 2016 Act") seeking an eviction order against the Respondent.
- 2 The Tribunal wrote to the Applicant's representative on 8 November 2024 to advise that the application was incomplete. The Tribunal requested a copy of the notice to leave given to the tenant, and a notice under section 11 of the Homelessness etc (Scotland) Act 2003 ("the 2003 Act") with proof that this had been sent to the local authority.
- 3 On 8 November 2024 the Tribunal received an email from the Applicant's representative with a copy of the notice to leave, and a notice under section 11 of the 2003 Act with a covering email as proof of delivery to the local authority.
- 4 Following review of the application by a legal member of the Tribunal with delegated powers of the Chamber President the Tribunal wrote again to the Applicant's representative in the following terms:-

“Before a decision can be made, we need you to provide us with the following:

1. Please confirm if the joint owner should be added as joint Applicant or provide written confirmation from her that the application can proceed in the Applicant’s sole name.

2. The tenancy agreement stipulates that notices must be served by hard copy and not email. The recorded delivery service appears to have failed and you have submitted emails as evidence of service. Please clarify why this can be considered to be valid service given the terms of the tenancy agreement.

3. Please provide evidence of compliance with the rent arrears pre action protocol.

Please respond within 14 days or your application may be rejected.

Please reply to this office with the necessary information by 27 December 2024. If we do not hear from you within this time, the President may decide to reject the application.”

- 5 The Tribunal received no response from the Applicant’s representative. On 14 January 2025 the Tribunal wrote again to them requesting they provide the information by 21 January 2025, failing which the application would be rejected.
- 6 No further response was received from the Applicant's representative.

Reasons for Decision

- 7 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.
- 8 The Applicant has provided proof of delivery of the notice to leave by email, following failed attempts by recorded delivery mail. In terms of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010, a notice to leave can only be served by email where the tenant has agreed in writing to the use of an email address for that purpose. The tenancy agreement between the parties in this case explicitly provides for service of notices by hard copy personal delivery or recorded mail. The Tribunal has queried the competency of the method of service with the Applicant’s representative. They have failed to provide any response. They have failed to identify an arguable legal basis upon which the method of service could be considered competent.
- 9 The Applicant’s representative has been asked for a response to this point on two occasions. They have been advised that in the absence of a response the application will 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.

Ruth O'Hare, Legal Member
21 February 2025