



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rules 8(1)(c) and 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/EV/25/1196

Re: Property at Flat B, 19A HANOVER STREET, STRANRAER, DG9 7SB (“the Property”)

Parties:

LEAROY PROPERTY LIMITED, 272 BATH STREET, GLASGOW, G2 4JR (“the Applicant”)

Tribunal Members: Ruth O’Hare, Legal Member with delegated powers from the Chamber President

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) rejects the application received by it on 18 March 2025 under Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

Background

- 1 This is an application under Rule 109 of the Rules and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of schedule 3 as the ground for possession.
- 2 The application was considered by a Legal Member of the Tribunal with delegated powers from the Chamber President to determine whether all mandatory requirements for lodgement had been met. On 10 April 2025 the Tribunal emailed the Applicant in terms of Rule 5(3) of the Rules requesting further information as follows:-

“You appear to have sent the notice to leave(“NTL”) by email. In order for that form of delivery to be lawful service, it would require to comply with the provisions contained in section 26 of the Interpretation and Legislative Reform

(Scotland) Act 2010. In terms of that Act , service of documents and notices by electronic communications is only permissible where the person on whom the document is being served has agreed, prior to the document being served, that it may be served in this manner and that it may be sent to an electronic address and in an electronic form specified by the person for the purpose.

Your tenancy agreement contains no clause where it is agreed that email could be used to serve notices on the tenant.

Please provide evidence that you agreed with your tenant in advance of the service of the notice by email that your tenant was willing to receive notices by electronic communications to that email address and the evidence of the electronic address and the electronic form specified by the tenant for that purpose.

Please provide evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. What steps have been taken in conjunction with the tenant to manage arrears prior to commencing proceedings for repossession on the grounds of rent arrears.

Further queries may arise upon examination of these documents.

The tribunal would suggest that you may find it useful to seek independent legal advice on this application, the matters contained in this letter and any further action which you wish to take.

Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination.

Please respond to this letter within the next two weeks. If you fail to respond to this letter then the tribunal may 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 2017.

Please reply to this office with the necessary information by 24 April 2025. If we do not hear from you within this time, the President may decide to reject the application.”

- 3 On 15 April 2025 the Tribunal received an email from the Applicant requesting an extension of the deadline for response to allow them further time to consult a solicitor. On 22 May 2025, the Tribunal responded to the Applicant confirming

that their extension request had been granted. The Tribunal asked the Applicant to provide their response by 6 May 2025.

- 4 The Tribunal received no further response from the Applicant.

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.*”
- 6 The basis of the decision is that the Applicant has failed to provide the information requested by the Tribunal. In terms of Rule 5(3) of the Rules, the Chamber President or another member of the Tribunal under the delegated powers of the Chamber President, may request further documents if it is determined that an application has not been lodged in the prescribed manner. The application in its current form does not meet the mandatory requirements for lodgement that apply to an application under Rule 109 of the Rules. In particular, the Applicant has failed to satisfy the Tribunal that the notice to leave has been validly served upon the Respondent. The Applicant has been asked for information on this point. They have been warned that a failure to provide the information may result in the application being rejected. The Applicant has therefore been given the opportunity to address the outstanding matters. Accordingly the Legal Member has concluded that the Applicant's failure to provide the information constitutes good reason to reject the application under Rule 8(1)(c).

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

Ruth O'Hare

7 June 2025

Legal Member/Chair

Date