



**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/25/2618

Laura Edgar (Applicant)

63A Richmond Street, Aberdeen, AB25 2TS (House)

1. The application to The First-tier Tribunal (the FTT) under rule 109 and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made on 17.6.25 stating ground 12 of schedule 3 of the Act as the ground on which the application relies.
2. The Applicant lodged a tenancy agreement which stated as the landlord Laura Edgar but also the landlord registration under the name of Laura and Eric Lettings Ltd. The title deeds for the property also state Laura and Eric Lettings Ltd. as the property owner.
3. Various documents were provided with the application. These include the Tenancy Agreement commencing 5.2.25 stating in clause 7 a rent of £525 per month payable in advance on the first day of the month. The documents also included a Notice to Leave dated 7.5.25 to a date of 7.6.25 and quoting ground 12 and specifically non payment of rent on 1.3.25, 1.4.25 and 1.5.25 as the reason for the notice.

4. On 22.7.25 the FTT requested the following information and made the following observations: It is noted the landlord and applicant is shown as Laura Edgar. The owner of the property showing in the title deeds obtained by the tribunal is a company called Laura and Eric Lettings Ltd. Please explain the basis upon which Laura Edgar is entitled to be the landlord in the tenancy agreement and the applicant in these applications. With regard to the eviction application, the notice to leave (NTL) based on ground 12 appears to be dated 7 May 2025. In order for that notice to be valid on that ground, the tenant must have been in arrears for three consecutive months at that date, i.e. since on or before 7 February 2025. It is the length of time that arrears have existed which is crucial not the amount of arrears involved. The information submitted with your application and also set out in the notice to leave ("NTL") seems to suggest that that your tenant had no arrears until 1 March 2025 and then entered into arrears on or after that date. If so, your tenant would not have been in arrears for three consecutive months until 1 June 2025 at the earliest. Is this correct? We would refer you to the Upper Tribunal decisions in the cases of *Rafique v Morgan* (2022) UT 07 and *Majid v Gaffney* (2019) UT 59. These Upper Tribunal decisions considered whether it is competent for a notice to leave to be served before a tenant has been in arrears for that required period of three consecutive months. The decisions confirmed that a notice to leave cannot be served until a tenant has been in arrears consecutively for a period of three months. The amount of the arrears has no bearing on it. The crucial element here is the period of time during which of the arrears have existed consecutively. This tribunal is bound to follow decisions which interpret relevant legal provisions issued by the Upper Tribunal, unless you can persuade a tribunal that the Upper Tribunal cases are wrongly decided. On what basis can the tribunal proceed if the ground you intend to rely upon did not exist at the date you say the NTL was served. With regard to this application, 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. 2 Upon receipt of the above information, a final decision can then be taken on whether the applications are valid and whether they 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
5. No reply was received.
6. On 5.9.25 the FTT requested the information again, stating: Please reply to this office with the necessary information by 19 September 2025. If we do not hear from you within this time, the President may decide to reject the application.
7. Again no reply has been received.
8. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

9. 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."

10. 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

Relevant Legislation

Rules of Procedure:

Rule 109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the 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 (if known); and

(iv) the ground or grounds for 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
- iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

2016 Act:

Ground 12 schedule 3

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ..

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. ..

11. The application is made on ground 12 of schedule 3 of the Act and would require, in terms of S 52 (3) of the Act, to be accompanied by a Notice to Leave and in terms of S 56 by a Notice to the Local Authority. The FTT considers that the meaning of this section is that the Notice to Leave has to be a valid Notice to Leave. The same requirements are also stated in rule 109, which is the rule under which the application is made.

12. The Notice to Leave provided is dated 7.5.25 and relies on the ground “You are in rent arrears over three consecutive months”. In terms of the tenancy agreement the rent is payable in advance on or before the first day of each month. The rent information lodged with the application shows a £0 balance 28.2.25. Since then no further payments were made. The matter of calculating arrears has been fully and comprehensively dealt with by the Upper Tribunal in at least two decisions, which are binding on the FTT.

13. In the decision [2019] UT 59 Majid v Gaffney Sheriff Fleming sets out the requirements of a valid Notice to Leave in cases of rent arrears and states in para 9 “[9] *The First-tier Tribunal may only order eviction if one of the grounds specified in Schedule 3 to the 2016 Act applies. It*

is clear from the terms of the Notice to Leave that ground 12 is being relied upon; as at the date of the Notice to Leave the tenant must have been in rent arrears for three or more consecutive months. Therefore, if the tenant was first in arrears of rent as at 30 April 2019 then the expiry of the three month period would be 30 July 2019. As at 1 July 2019 the tenant was not in rent arrears for three or more consecutive months. The tenant must have been in arrears for the specified period of time, not simply owing rent. Ground 12 does not apply as at the date of service of the Notice to Leave.” and goes on to say: “[13] The basis for the decision of the First-tier Tribunal is that the Notice to Leave specified a ground for eviction which was not satisfied as at the date of the service. That being the case the notice itself is invalid. [14] The appellant appears to be conflating two separate statutory provisions. In terms of section 62(1)(b) reference is made to a date on which the landlord “expects to become entitled to make an application for an eviction order to the First-Tier Tribunal”. It is clear that the word “expects” relates to the date on which the application will be made. That is entirely distinct from the eviction ground. The statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not it is invalid. If it is invalid decree for eviction should not be granted. The decision of the First-tier Tribunal sets out the position with clarity. It could in my view it could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to the making of an application. Such an approach would be open to significant abuse. Either the ground exists at the time when the Notice to Leave is served or it does not. If it does not the Notice to Leave is invalid and it cannot be founded on as a basis for overcoming the security of tenure that the 2016 Act. There is no arguable ground of law. Permission to appeal is refused.” The issue was further recently confirmed in the decision of Sheriff Kelly in [2022] UT07 Rafique v Morgan.

14. Taking the first date when a deficit is shown on the rent statement after the £0 balance on 28.2.25, which would be 1.3.25, then the expiry of the three months period would be 1.6.2025. The documents lodged show that the Notice to Leave is dated 7.5.25. At that time the tenant had not been in arrears of rent for a period of three or more consecutive months. This is exactly the same situation which was addressed in the UT decision Majid v Gaffney.
15. Having regard to these decisions, the clear requirement for a valid Notice to Leave in arrears cases is that as at the date the Notice to Leave is served on the tenant, the tenant is in arrears of rent for three or more consecutive months. On 7.5.25, the date of the notice, the tenant had not been in arrears of rent for that required period. The Notice to Leave is invalid because at the time the Notice to Leave was served ground 12 did not apply. It would not be appropriate to accept an application in those circumstances as it does not meet the lodging requirements. The application is accordingly rejected.
16. Furthermore, In order to process an application, the FTT has to be satisfied that on the face of it the Applicant stated in the application has title and interest to make the application. This is a fundamental requirement. The FTT notes that the person stated as Applicant in this case is neither the registered landlord nor the owner of the property.
17. The FTT had given the Applicant the opportunity to provide the relevant details on 2 occasions. There was no reply.
18. The FTT in this case considers that it would not be appropriate to accept an application

in a situation where the Applicant has not explained on what basis they are entitled to make the application.

19. The Applicant had also clearly decided not to correspond with the FTT further despite two requests for further information. As the Applicant refused to communicate with the Tribunal in its requests under rule 5 of the Procedure Rules, the FTT in this case considers that the application is not insisted upon and that it would not be appropriate to accept an application which is no longer insisted upon.
20. The application is therefore rejected.
21. For the avoidance of doubt, this does not prevent the Applicant from making an application in future if all necessary information and documentation for a valid application is provided.

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.

Petra Hennig McFatridge
Legal Member
23 October 2025