

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/25/2976

Parties

Ms Cristina Chiriac, Vasile Ipate (Applicant)

Mackenzie Way (Applicant's Representative)

1 2/R Victoria Road, Saltcoats, KA21 5LG (House)

1. The application received by the First-tier Tribunal, Housing and Property Chamber (FTT) on 10.7.25. It was lodged under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). Included with the application were a notice to leave dated 9.4.25, a S 11 Notice as required in terms of S 56 of the Act, an email one of the joint tenants sending the Notice to Leave with follow on correspondence showing this could not be read by the tenant as the forms were blank, and a rent statement showing that rent was paid, albeit late, covering the period up to 27.2.25.
2. The FTT wrote to the applicant on 31.7.25 and 8.9.25 requesting the following further

- information: A Legal Member of the Tribunal with delegated powers of the President has considered your application and requests the following information to allow your application to proceed: Please write to App Rep 1. Your Notice to Leave cites Ground 11, breach of tenancy, but does not state what the breach is other than referring to unpaid rent. Rent arrears is specifically excluded from Ground 11. Ground 12 is the appropriate Ground for three consecutive months' rent. If you are relying on Ground 11, you must detail and evidence the tenancy breach. 2. Your Notice to Leave gives 84 days' notice. The correct period for Ground 11 (and Ground 12) is 28 days. Even if you had the correct notice period, the calculation for the date to be inserted in the Notice to Leave is an additional three days being the day after the end of the notice period and 48 hours for receipt by the tenant, regardless of method of sending. You have stated that the earliest date for raising proceeding is the 84th day and so this is three days short. 3. Your Notice to Leave has been emailed to only one of the tenants/Respondents and his reply is that he cannot read the attachment. Please submit evidence of issue of the Notice to Leave to both tenants/Respondents and evidence of receipts by them. 4. Your Application cites Ground 12 but you have not included this Ground in the Notice to Leave. You must submit a Notice to Leave for this Ground. 5. Please submit written consent or a mandate authorising you to act on behalf of the landlord. 6. Although the landlord/Applicant is registered in terms of landlord registration, the Property is not. Are you able to explain why this is, please?
3. No reply has been received. The case documents are referred to for their terms and held to be incorporated herein.

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."

5. 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

1. S 51 of the Act states: *(1)The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.* In terms of S 52 (3) of the Act *"an application must be accompanied by a notice to leave which has been given to the tenant."* In terms of S 78 (3) of the Act :*" In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise."* Rule 109 of the Rules of Procedure requires that any application under this rule is *"accompanied by a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act"*
2. The application is directed at two respondents and the Notice to Leave and S 11 notices provide the names of two joint tenants. If this was not the case or if the email for both tenants was the same, then the applicant should have provided the tenancy agreement to show this. However, the documents submitted show that only one email was sent directed at one of the two respondents when sending the Notice to Leave and this could not be read by the tenant. Thus the Tribunal has no evidence that a Notice to Leave has

been served on both respondents as required.

3. In order to make a valid application to the FTT, the Notice to Leave must have been served on all joint tenants. No evidence has been provided that a NTL was served on the second named respondent.
4. The FTT had alerted the applicant to the problem and received no reply.
5. As the application was not accompanied by a valid NTL served on both joint tenants, it would not be appropriate to accept the application.
6. The application is made under ground 12. Ground 12 was not stated as a ground on the Notice to Leave. The notice stated ground 11 but ground 11 of schedule 3 of the Act specifically excludes the matter of rent payments as a breach of the tenancy conditions. However, even if one was to re-interpret the ground given on the Notice to Leave, ground 11, as having been intended to signify ground 12 on the basis that the Notice to Leave clearly described it was issued on the basis of non payment of rent for three consecutive months, the Notice would not be valid in terms of the necessary rent arrears. The rent statement shows that by the end of January 2025 rent had been paid up to 27.2.25, albeit late with the last payment having been made on 27.2.25 to cover the payment up to the end of February. Thus the arrears start the earliest on 28.2.25 for the period 28.2.25 to 30.3.25. The rent statement shows that the rent falls due to be paid on the last day of the month. 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.
7. 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.

8. Taking the first date when a deficit is as supported by the rent statement, which would be 28.2.25 then the expiry of the three months period would be 28.5.25. The documents lodged show that the Notice to Leave is dated 9.4.25. At that time the tenants 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.
9. 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 9.4.25, the date of the notice, the tenants had not been in arrears of rent for that required period. **The Notice to Leave is invalid even if one accepted it was meant to be issued on ground 12, 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 also rejected on that ground.**
10. Furthermore, the applicant has not cooperated with the application process and has not replied to correspondence. It appears that the application is no longer being pursued.
11. For the avoidance of doubt, the Applicant should note that this decision does not prevent the Applicant from making a fresh application to the FTT in future.

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

27 October 2025