



**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/25/3984

**Molton Property Services Ltd (Applicant)**

**6 Broomhill Road West, Kilmarnock, KA1 4PQ (House)**

1. The application was made on 17.9.2025 to the First-tier Tribunal (the FTT) under rule 109 and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) using ground 12 of schedule 3 of the Act.
2. The following documents were submitted: Notice to Leave dated 5.6.2025 to 6.7.2025 on ground 12 and email sending same dated 5.6.2025, rent statement showing arrears starting on 14.4.2025, tenancy agreement.
3. The FTT wrote to the Applicant on 23.10.2025 requesting further information by 14.06.2023 in the following terms: " Please provide a mandate authorising you to act as the applicants' representative in this matter. Please clarify the name of the landlord. The tenancy agreement shows it as Motion Property Services Ltd.....your application says Molton Property Services Limited. The notice to leave (NTL) based on ground 12 appears to be dated 5 June 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 5 March 2025. It is the length of time that arrears have existed which is crucial not the amount of arrears involved. The rent

statement you have provided seems to suggest that that your tenant had no rent arrears on 7 April 2025 ( indeed the tenant appears to be in credit by £2) and then entered into arrears on or after 14 April 2025. If so, your tenant would not have been in arrears for three consecutive months until 14 July 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. 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. You have not provided a copy of the notice which is required to be given to the local authority under section 11(3) of the Homelessness etc. (Scotland) Act 2003. Please provide a copy and evidence of the method and date on which that was given to the local authority. Further queries may arise upon receipt of your responses. 2 The tribunal would suggest that you may wish 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."

4. No reply has been received. The file documents are referred to for their terms and held to be incorporated herein.

## DECISION

5. 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."*

6. 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 [\[F72\]](#) (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

### *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.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

1. 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.

2. The Notice to Leave provided is dated 5.6.2025 and was served by email on that date. It states as the only eviction ground on the notice ground 12. In terms of the tenancy agreement the rent of £799 per month is payable in advance on or before the 14th day of each month. The rent statement lodged with the application shows a +£2 balance prior to 14.4.2025, when no payment was made on the due date. The arrears increase from then onwards.
3. The matter of how to establish the level and duration of arrears of rent for the required period or sum on the relevant day of the Notice to Leave being given to the tenant has been fully and comprehensively dealt with by the Upper Tribunal in at least two decisions, which are binding on the FTT. The UT held that the ground must be met on the day when the Notice to Leave is given to the tenant.
4. 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.
5. 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 requirement for the ground must be met. In cases of an eviction under ground 12 thus the question is whether on the date the Notice to Leave was given to the tenant the tenant has been in arrears of rent for three or more consecutive months. The UT also defined that there is a requirement of a tenant being in arrears of rent, not simply owing rent.

6. Taking the first date when a deficit is shown on the rent statement, 14.4.2025 and the date when Notice to Leave was given to the tenant on 5.6.2025 it is clear that the three months period required had not expired when the Notice to Leave was served. The expiry of the required 3 months period would be 14.7.2025. The FTT is bound by the clear decisions of the Upper Tribunal on this matter that the requirement is that the ground is met on the day the Notice to Leave is given to the tenant. The Notice to Leave was issued incorrectly and is thus invalid. It would not be appropriate to accept an application based on a Notice to Leave which is invalid.
7. Furthermore, the application was not accompanied by the required S 11 notice as stated in Rule 109 (b) (iii). This had been requested but not provided.
8. The application does not comply with the requirements set out in Rule 109 of the Procedure Rules and is accordingly rejected.
9. The applicant should note that this decision does not prevent the applicant from making a further application to the FTT in future if all necessary documents can be 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-McFatrige**

Petra Hennig McFatrige  
Legal Member

28 November 2025