



**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/25/3996**

Parties

Lewis Duncan (Applicant)

1/R 40 Whitehall Place, Aberdeen, AB25 2PB(House)

A PROCEDURAL BACKGROUND:

1. The application under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was received by the Tribunal on 16.9.2025. The application was made under grounds 3 and 12 of schedule 3 of the Act.
2. The following documents were ultimately lodged in connection with the application:- S 11 Notice to Local Authority, Tenancy Agreement commencing 10.11.2021. The application also referred to a Notice to Leave but this was not attached and the only other document attached to the application email appeared to be a zip file containing service

confirmation of a notice, which could not be opened by the FTT.

3. The Tribunal wrote to the Applicant on 23.10.2025 in the following terms: Your application has been reviewed by a legal member of the First-tier Tribunal with delegated powers of the Chamber President who has raised the following matters. • The title deeds obtained by the tribunal show that the property is in the joint ownership of Lewis Duncan and Lewis Sim Duncan. Please clarify the identity of the applicant and please indicate whether the other joint owner is to be added as a joint applicant • Please provide a copy of the notice to leave (“NTL”) together with evidence of the method of service upon the tenant and evidence of its receipt. Please confirm that service was also made in accordance with the manner agreed in the tenancy agreement. • You have 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 evidence of the method and date on which that was given to the local authority. • Please clarify the ground under which an eviction order is sought. The application form mentions both grounds 3 (The Landlord intends to refurbish the Let Property) and 12 (Tenant is in rent arrears over three consecutive months). Any ground upon which you wish to base the application must be set out in the NTL. • In terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, Rule 109, it is a requirement that an application for eviction is accompanied by evidence showing that the eviction ground has been met. The relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016 set out the types of evidence which might tend to show that the landlord has that intention. Can you please provide appropriate evidence supporting the ground or grounds upon which you seek to rely as set out in the relevant schedule to the 2016 Act. • In respect of ground 3 that evidence includes (for example)— • (a) any planning permission which the intended refurbishment would require, • (b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment 2 • Please note that ground 3 requires you to show that you intend to carry out significantly disruptive works to the property and it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord • If you are proceeding under ground 12, 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 receipt of your reply. Upon receipt of the above information, a final decision can then be taken on whether the application is re valid and whether it should be accepted and referred to the tribunal for full determination. 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. 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 6 November 2025.

4. No reply and no further documentation were received.
5. The case documents and all correspondence in the case are referred to for their terms and held to be incorporated herein.

B DECISION

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."

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.

C REASONS FOR DECISION:

I Applicable Legislation:

Rule 109 of the Procedure Rules states:

Application for an eviction order

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 [F65(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; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

[F66(iv)a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and]

(c)be signed and dated by the landlord or a representative of the landlord.

II Findings and Reasons:

1. In terms of S 52 (3) of the Act and rule 109 (b) (ii) of the Rules of Procedure an application must be accompanied by a copy of the Notice to Leave. I consider that this means that a

valid Notice to Leave must be submitted with the application. No such notice was received by the FTT in connection with the application. Even the zip file referred to in the email of the Applicant only referred to the service confirmation being the content of the file and thus it appears that no Notice to Leave was attached to the email lodging the application.

2. The Applicant had been advised that no Notice to Leave was attached to the application and that this had to be submitted. He was also advised that the FTT would require evidence to support the grounds on which the application was based. He submitted neither and did not reply to the FTT correspondence. As at the date of the decision the application remains incomplete as it was not accompanied by a Notice to Leave and by evidence to show that the grounds apply.
3. It would not be appropriate for the Tribunal to accept an application based on an invalid Notice to Leave, which thus does not meet the lodging requirement of rule 109 (b) (i) and (ii) of the Rules of Procedure and the requirement for a valid application in terms of S 52 (3) of the Act. For the above reasons the application has to be rejected.

D 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
26 November 2025