



**DECISION AND STATEMENT OF REASONS OF FIONA WATSON, 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 Rules")**

in connection with

**2 Church Walk, Kinghorn, KY3 9TP ("the Property")**

**Case Reference: FTS/HPC/EV/25/4593**

**Vivienne Kemp, 12 Benham Close, Goldhanger, Maldon, CM9 8FA ("the Applicant")**

1. The Applicant seeks a repossession order in terms of Rule 109 of the Rules. The Applicant lodged the following documents with the application:
  - (i) Notice to Leave
  - (ii) S11 notice to local authority
  
2. On 19 November 2025, a request was issued to the Applicant that they provide the following information:

*"A Legal Member has considered your application and is having some difficulty in understanding what has happened with the Notice to Leave*

- It is dated 11th March 2025, and confirms that a Tribunal application cannot be raised before 5th June 2025, but it does not appear that service on the Respondent has been attempted until 25th September 2025, and no signature has been obtained.*

- *Please confirm what has happened regarding service of the Notice to Leave and address the Tribunal on how you consider it be properly served, and valid, given the statutory notice periods.*
- *Please also provide a copy of the tenancy agreement.”*

3. By email of 3 December re2025, the Applicant's representative advised that there had been some difficulties with service of the Notice to Leave. It was confirmed that:
  - (i) The first attempt at service of the notice was on 4 August 2025;
  - (ii) The tracking history information available on the Royal Mail website was incomplete;
  - (iii) On 27th August 2025 a further notice was posted at the local Post Office and the same issue arose;
  - (iv) Following a complaint to the Royal Mail they confirmed that the Notice sent on 27th August 2025 was delivered/collected but there was no signature.
  - (v) It was conceded that the notice period starts on the date upon which the tenant receives the notice, that the applicant's representative cannot establish that the letting agent's letter dated 11th March 2025 was given to the tenant in terms of the legislation and that there is no known date of delivery/collection for the 27th August notice delivery.

## **DECISION**

4. The Legal Member considered the application in terms of Rule 8 of the Chamber 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 and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that there is good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Rules.**

### **Reasons for Decision**

6. The Tribunal cannot be satisfied that there has been competent service of the Notice to Leave on the Respondent. The Notice to Leave is signed and dated 11 March 2025 and advises at Part 4 that an application will not be submitted to the Tribunal before 5 June 2025. The landlord seeks to rely on Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 and accordingly in terms of s54 of the said Act, must give the tenant at least 84 days' notice that they intend to raise an application on that ground as of 5 June. The Notice would have to have been served on the tenant no later than 11 March 2025 to give the 84 days' notice to 5 June 2025 and to comply with the requirements of s62(5) of the said Act. Furthermore, even if the Tribunal was prepared to exercise discretion in this regard, there is no evidence that the

Notice has been competently served at a date thereafter and with the requisite 84 day period passing prior to the application being raised. The Legal Member therefore determines that it would not be appropriate to accept the application. The application is rejected on that basis.

### **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.

Fiona Watson  
Legal Member  
24 December 2025