



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

30 Shaw Street, Dunfermline, Fife ("the property")

Case Reference: FTS/HPC/EV/20/1100

Steven Duncan, 10 Dalcross Way, Dunfermline, Fife ("the Applicant")

Peter Smith, 30 Shaw Street, Dunfermline, Fife ("the Respondent")

1. By application received on 20 April 2020 the Applicant seeks an eviction order in terms of Rule 109 of the Rules and Section 51 Private Housing (Tenancies) (Scotland) Act 2016. A copy Notice to Leave was lodged with the application.
2. On 28 May 2020 the Tribunal issued a letter to the Applicant requesting further information and documentation. The Applicant was asked to provide a copy of the tenancy agreement, a copy of the Notice to the Local Authority in terms of Section 11 Homelessness etc (Scotland) Act 2003 and evidence of the eviction grounds. The Applicant was also asked to clarify the eviction ground or grounds, as this was absent from the application form, and to clarify the basis upon which the Tribunal could consider the application as the Applicant does not appear to be the owner and landlord of the property and the Notice to Leave appeared to be invalid. The Applicant was directed to provide a response by 11 June 2020, or the application may be rejected. No response was received. On 30 June 2020 the Tribunal wrote again to the Applicant, directing him to

provide a response to the previous letter by 14 July 2020, or the application may be rejected. No response has been received.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules. That Rule provides:-

“(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “

- 4. After consideration of the application, the supporting documentation and correspondence from the Applicant, the Legal Member considers that the application should be rejected on the basis that the Applicant has failed to comply with Rule 5.**

Reasons for Decision

5. The Applicant submitted an application for an eviction order in terms of Rule

109 of the Procedural Rules. This Rule states that “the application must - state (iv) the ground or grounds for eviction;” and must “(b) be accompanied by – (i) evidence showing that the eviction ground 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.” The Applicant failed to stipulate the ground or grounds for eviction in the application. The Applicant also failed to submit a copy of the Notice to the local Authority or evidence showing that the eviction grounds have been met. On 28 May and 30 June 2020 the Tribunal wrote to the Applicant directing the Applicant to provide the required information and documents. The Applicant has failed to provide them.

6. As the Applicant has failed to provide the information and documents required in terms of Rule 109 of the Rules, and has failed to respond to letters from the Tribunal directing him to do so, in terms of Rule 5(3) of the Rules, the Legal Member determines that the application cannot be accepted. 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.

Josephine Bonnar
Legal Member
10 August 2020