

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF STEVEN QUITHER, 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

FLAT 3-1, 37 VIRGINIA STREET, GLASGOW G1 1TS

**Case Reference: FTS/HPC/EV/19/1690**

**DAVID INNES, 1A UNDERCLIFF ROAD, WEMYSS BAY PA18 6AQ ("the Applicant")**

**ABDULMALIK DAMISA MUHIBDEEN, FLAT 3-1, 37 VIRGINIA STREET, GLASGOW G1 1TS  
("the Respondent")**

**DECISION**

After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

**BACKGROUND**

1. On 3 June 2019, an application was received from the Applicant, via his Agents (Glasgow Property Letting of Glasgow). The application was made under Rule 109 of the Procedural

Rules being an application for a Private Residential Tenancy Eviction Order. The following documents were enclosed with the application:-

- (Unsigned) Notice to Leave dated 3 June 2019, (subsequently sent again, duly signed) both intimating no application for eviction would be submitted to this tribunal before 30 June 2019; and
- Statement of Rent Arrears to 1 June 2019;

After sundry correspondence a Notice under Section 11 of the Homelessness etc Act 2003 was also provided.

2. Rule 8 of the Procedural Rules 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."*

## REASONS FOR DECISION

3. The Applicant seeks to recover possession of the property on the basis that Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") applied to terminate the tenancy. In that respect, the documentation referred to *supra* was lodged with the Application.
  
4. No Tenancy Agreement was lodged. However, s54(1) of the 2016 Act states:-  
"A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice."  
Since this application proceeded upon the basis of 3 months arrears of rent (said Ground 12), the appropriate period of notice, in terms of said s54(2)(b)(i) and (3)(b)(iii) would be 28 days, which was the period referred to in the Notice to Leave. However, the application was made on 3 June, well before the expiry of said notice period. Accordingly it seems to me to be premature.
  
5. Accordingly, I consider it is not appropriate to accept the application, which I now reject, on the basis that it has been raised prematurely and not in compliance with the terms of said s54.

### 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.

# Steven Quither

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Legal Member

GLASGOW  
19 JUNE 2019