



**DECISION AND STATEMENT OF REASONS OF MS. SUSANNE L. M. TANNER Q.C.,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Schedule 1, Rule 8 of The First-tier Tribunal for Scotland Housing and
Property Chamber (Procedure) Regulations 2017, as amended ("the 2017 Rules")**

in connection with

Ref: FTS/HPC/EV/20/2552

9 Osborne House, East Fergus Place, Kirkcaldy, KY1 1XE ("the Property")

Martin & CO Kirkcaldy 93 St Clair Street, Kirkcaldy, KY1 2BS ("the Applicant")

**Martin & CO Kirkcaldy 93 St Clair Street, Kirkcaldy, KY1 2BS ("the Applicant's
Representative")**

**Ms Karen Struthers 9 Osborne House, East Fergus Place, Kirkcaldy, KY1 1XE ("the
Respondent")**

DECISION

**It was determined by the Legal Member acting under the delegated powers of the
Chamber President, in terms of 8 of the 2017 Rules that there was a 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, therefore the Application must be
rejected in terms of Rule 8(1).**

REASONS

1. On 9 December 2020, an application dated 7 November 2020 was received from the Applicant ("the Application"). The Application was made under Rule 109 of the 2017 Rules, being an application for an eviction order in relation to a private residential tenancy.

The Applicant attached a number of documents.

2. An application made in terms of Rule 109 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 (if known); and*
- iv. *The ground or grounds for eviction;*

b. *And 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 tenancy 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*
- iv. *A copy of Form BB ... (if applicable).*

c. *By signed and dated by the landlord or a representative of the landlord.*

3. The Applicant submitted an incomplete application and it was not accompanied by all of the required documents.

4. On 17 November 2020, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant, as follows:

“Before a decision can be made, we need you to provide us with the following:

Your application has been referred to a legal member. The legal member requests further information from you as follows:

The Applicant is neither the owner nor the landlord of the Property. Please either amend the Applicant or provide written confirmation that the current Applicant has authority to act from the landlord.

The Notice to Leave does not provide the tenant with the correct notice under the Coronavirus (Scotland) Act 2020. Please either withdraw the application and re-apply when the correct notice period has expired or proceed with the application on the basis that you intend to ask the Tribunal to entertain the application although it is in breach of Section 54 (Section 52(4) 2016 Act). A Decision as to whether it is reasonable for the Tribunal to entertain the application will not be made at the application/sifting stage, but by the Tribunal that deals with the application if it is accepted. You will have to satisfy the Tribunal that it is reasonable to do so at the

CMD or subsequent Hearing.

Please provide proof of service of the Notice to Leave.

Please provide a copy of the section 11 Notice and proof of service on the local authority.

Please reply to this office with the necessary information by 12 January 2021. If we do not hear from you within this time, the President may decide to reject the application.

5. The Applicant failed to respond to the request for further information.

6. On 21 January 2021 a further request for the said information was sent to the Applicant, in the following terms:

“Before a decision can be made, we need you to provide us with the following:

We refer to our letter to you dated 29th December 2020, a further copy of which we enclose, and note that we have not received a reply from you. Could you please respond to the matters raised in that letter within 14 days of this letter or the Tribunal may well reject your application.

Please reply to this office with the necessary information by 4 February 2021. If we do not hear from you within this time, the President may decide to reject the application.”

7. The Applicant failed to respond.

8. On 16 February 2021, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms of Rules 5, 8 and 103 of the 2017 Rules.

9. Rule 8 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."

10. After consideration of the Application, the attachments, the repeated further information requests and the Applicant's failure to respond, it was determined that the requirements for making an application under Rule 109 have not been met. At the time at which it was made, the Application did not meet the requirements for making an Application in terms of Rule 109. The Applicant has failed to respond to the tribunal's further information requests. The Applicant has not provided the required information within the stipulated timescales. For those reasons, it was determined that there was a 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; therefore the Application must be rejected in terms of Rule 8(1).

11. What you should do now

- a. If you accept the Legal Member's decision, there is no need to reply.
- b. 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.

Ms. Susanne L. M. Tanner Q.C.

Legal Member

16 February 2021