



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

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

The Property at 74 William Fitzgerald Way, Dundee

Case Reference: FTS/HPC/EV/21/1941

BS Properties ("the Applicant")

Brendan Milne ("the Respondent")

1. On 12th August 2021, an application was received from the applicant. The application was made under Rule 109 of the Procedural Rules, being an application for an order for possession of the Property and for the Tenant to vacate the property on the ground that the Landlord wished to sell the Property.
2. The following documents were enclosed with the application:-
 - Notice to leave
 - Copy S11 notice
3. The Tribunal requested further information from the applicant by letter dated 25th August 2021, in which the Tribunal asked for the following information:-

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

 1. *The property appears to be owned by Laura Jane Lamb or Wylie, not the Applicant. Please explain the basis upon which the Applicant can let out the*

property and pursue an eviction order, or advise if the application should be amended to the correct name. If so, please provide contact details, the relationship with the current Applicant and a mandate authorising the representative to act for the correct Applicant. 2. Please provide a copy of the tenancy agreement. 3. The Notice to leave appears to give 5 months notice, not 6. It has therefore been lodged before the expiry of the relevant notice period. Please advise if you wish to withdraw the application and re-submit it when the correct notice period has passed. Alternatively, please advise if you wish the Tribunal to allow the application to proceed although it is in breach of section 54, which stipulates the correct notice periods. Please note that if you elect to proceed on this basis, you will require to satisfy the Tribunal that it is reasonable to do this. A decision on this will not be made at the application stage, but at a CMD or hearing, if the application is accepted. 4. Please confirm how and when the Notice to leave was given to the Respondent, and provide evidence of this. 5. Please confirm how and when the Section 11 Notice was sent to the Local Authority, and provide evidence of this. Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk 6. Please provide evidence of the eviction ground, such as a copy of the home report or contract with estate agent. Please reply to this office with the necessary information by 10 September 2021. If we do not hear from you within this time, the President may decide to reject the application.

4. A partial response was received on 6th September 2021 with some of the information requested and the Tribunal wrote again on 21st September 2021 asking:-

You have provided an incomplete response to the tribunal's previous Request for Further Information dated 27 August 2021. The only additional information provided was (1) a copy of the tenancy agreement; and (2) proof of sending the section 11 notice. You also made a statement in response to point (1) in the previous request but the information is incomplete and does not answer the question of title to enter into the tenancy or to make the application. The requests are therefore repeated below, together with other matters that have arisen following consideration of the tenancy agreement and the information you provided. It is recommended that you seek legal or housing advice prior to

responding as a failure to provide required information may lead to the application being refused. (1) You require to show title for the Applicant to make the application and to enter into the tenancy agreement. The property appears to be owned by Registered proprietor LAURA JANE LAMB (otherwise LAURA JANE WYLIE) 26 Balvaird Place, Dunfermline, KY12 0XR, not the Applicant. You have stated in your recent correspondence that BS Properties is a letting agent. Please explain the factual and legal basis upon which the Applicant can let out the property and pursue an eviction order, or advise if the application should be amended to the correct name. If you wish to amend, please provide an amended application form Applicant and Representative sections, provide full contact details for the representative, provide information about the relationship with the current Applicant and provide a mandate authorising the representative to act for the correct Applicant. Supported by the Scottish Courts and Tribunals Service www.scotcourtsribunals.gov.uk (2) Now that you have provided the tenancy agreement, there are two tenants named but only one Respondent named on the Application. If you wish to amend the Application to add a second Respondent, please provide a paper apart adding an additional Respondent. (3) The application appears to be premature and the notice to leave appears to be invalid. 6 months' notice is required for the ground you are relying on. The NTL is dated 2 March 2021 (no proof has been provided of when it was served – see below) and you stated in the notice that proceedings would not be raised before 5 August 2021, which is less than 6 months' notice. The application was sent to the tribunal on 12 August 2021. The Application has therefore been lodged before the expiry of the relevant notice period. Please advise if you wish to withdraw the application and re-submit it when the correct notice period has passed. Alternatively, please advise if you wish the Tribunal to allow the application to proceed although it is in breach of section 54 of the 2016 Act. Please note that if you elect to proceed on this basis, you will require to satisfy the Tribunal that it is reasonable to do this. A decision on this will not be made at the application stage, but at a CMD or hearing, if the application is accepted. (4) Please confirm how and when the Notice to leave was given to the Respondent, and provide evidence of this. If you amend to proceed against two respondents you will need to show how it was sent to each of them. (5) Please provide evidence of the eviction ground, such as a copy of the home

report or contract with estate agent. (6) If, as you stated in your recent correspondence, the tenants have indicated that they are moving out then please inform the tribunal should this occur and withdraw the application if no longer required. (7) Please provide proof of Landlord registration for the registered proprietor of the property. Please reply to this office with the necessary information by 5 October 2021. If we do not hear from you within this time, the President may decide to reject the application”

5. The Applicant responded on 5th October by e-mail stating *“Laura Wylie is the owner for 74 William Fitz Gerald Way, we are Laura letting agent working on behalf of her for this eviction, Laura's landlord registration number is 466429/180/16121, I have attached the contact between our selves and Mrs Wylie, also a copy of the notice given by DocuSign.”*
6. As all the information asked for was still not provided the Tribunal wrote again on 29th October 2021 stating *“Thank you for your response dated 5th October, unfortunately you have still not addressed all the Tribunal's requests to allow your application to be considered for acceptance. You have advised that you have an agreement to manage the property but it is not clear that this allows you to raise eviction actions without instructions from the owner. Please consider whether you wish to amend the application to run in the name of the owner with yourselves as representatives which does appear to be authorised by your management agreement or please submit your reasons why you believe you have right title and interest to raise an action for eviction when you are only authorised to manage the property and collect rent? If you wish to amend the Applicant's name please supply the full name of the Applicant and her address as well as the full name of the representative and address. 1. You have not addressed the question of whether you wish to add the second tenant as a respondent to the Application and if so please advise the Respondent's full name and address? 2. You have not provided evidence of the ground of eviction you are relying on and this is a requirement of the Tribunal's rules before an application can be accepted so can you please provide evidence of the intention to sell the Property such as a home report or instructions to a solicitor or estate agent? 3. You have not responded to the question of your application being premature and indeed you have now submitted a copy notice to leave with no leaving date entered on it? Please explain why that was*

lodged? a. Also please respond to the question that has already been asked namely: - that given the Notice To Leave is dated 2 March 2021 (with no proof having Supported by the Scottish Courts and Tribunals Service www.scotcourtsribunals.gov.uk been provided of when it was served – see below) and you stated in the notice that proceedings would not be raised before 5 August 2021, which is less than 6 months’ notice the application appears premature. The application was sent to the tribunal on 12 August 2021. The Application has therefore been lodged before the expiry of the relevant notice period. Please advise if you wish to withdraw the application and re-submit it when the correct notice period has passed. Alternatively, please advise if you wish the Tribunal to allow the application to proceed although it is in breach of section 54 of the 2016 Act. Please note that if you elect to proceed on this basis, you will require to satisfy the Tribunal that it is reasonable to do this. A decision on this will not be made at the application stage, but at a CMD or hearing, if the application is accepted. 4. Please confirm how and when the Notice to leave was given to the Respondent, and provide evidence of this such as a copy of e-mail serving it or recorded delivery? If you amend to proceed against two respondents you will need to show how it was sent to each of them. You mention this in your response but there is no evidence enclosed of how it was served on the Respondent and we require to see this. Please now respond in full to each of the items requested within 14 days (by 12 November 2021) so that your application can be considered fully, failure to respond in full may result in your application being rejected”

7. Brian Stewart of the Applicant responded on 10th November by e-mail saying “*Hi, I would like to add Tara conteras as a second tenant,,please see attached letter from Mrs While/lamb letter of prove of sale from estate agent,The application was premature due to a clerical error.i will attach the notice to leave in a separate email.*” Along with this there were several copies of the first page of the notice to leave lodged originally. No details of the second respondent, not notice to leave for the second respondent or details of why the application should be accepted prematurely or further details of what right the Applicant has to raise this action.
8. The Tribunal wrote again on 24th November saying: - “*I refer to your recent application which has been referred to the Chamber President for*

consideration. Before a decision can be made, we need you to provide us with the following: We refer to the tribunal's request of 29 October 2021 for further information to enable your application to be considered and to further correspondence. An incomplete response has been provided to the tribunal's request and the way in which you have attempted to submit information is not acceptable to the tribunal due to security reasons. Please note that as you have previously been advised, a storage file was attached to your recent email (which the tribunal is not permitted to open for security reasons). In addition, three copies of the 1st page of the Notice to Leave were attached, as well as a line stating "I would like to add Tara conteras as a second tenant". Despite the tribunal's administration replying to advise that the tribunal does not accept storage files, and that the information requires to be submitted via pdf or word document, and to clarify the details of the additional tenant, as well to seek as a response to the further information request, you replied and attached a storage file again, and a further duplicate of the already received 1st page of the Notice to Leave. We would request that you fully consider the terms of the tribunal's letter of 29 October 2021 and what is stated above. There are a number of issues which must Supported by the Scottish Courts and Tribunals Service www.scotcourtsribunals.gov.uk be addressed, including the fact that the application appears to be premature and that you have not provided evidence of title to make the application in the name of a letting agent rather than the registered proprietor. If you do not fully respond with a satisfactory response to the tribunal's requests and submit an amended application, if so advised, the application will have to be rejected. You may wish to seek legal advice prior to responding. Please reply to this office with the necessary information by 8 December 2021. If we do not hear from you within this time, the President may decide to reject the application."

9. The Applicant responded once more on 29th November 2021 stating " Please see attached email to Brandon miline notice to leave also attached letter from estate agent for Miss Laura Whilie/lamb,I have already added i would like to add Tara con-tares 74 William Fitzgerald way,Dundee,dd49fb this is Tara's current address with Brendon Miline,I will also send the email sent to brendon miline of evidence that he received the notice to leave on the 2nd march,i would like the tribunal to allow the application to proceed."

10. *The Tribunal wrote once more on 15th December 2021 "I refer to your recent application which has been referred to the Chamber President for consideration. Before a decision can be made, please address the following matters: 1. You still require to provide evidence of service of the notice to leave on the respondent, Brendan Milne 2. You still require to provide evidence of service of the section 11 notice for Brendan Milne 3. Please provide a notice to leave which has been served on the second respondent, Tara Conteras together with evidence of service 4. Please provide a section 11 notice relating to the second respondent, together with evidence of service 5. As Laura Lamb is the owner of the property, please provide evidence of the title and interest of BS Properties to grant a lease (the contract you provided was blank) 6. As Laura Lamb is the owner of the property, please provide evidence of the title and interest of BS Properties to bring these proceedings (the contract you provided was blank); alternatively you may amend the application with the owner Laura Lamb being the applicant; if so please provide an amended application form. Supported by the Scottish Courts and Tribunals Service www.scotcourtribunals.gov.uk 7. As previously requested the tribunal requests that you submit a fresh application form with the clear details of all matters relating to this application including a. The exact name and address of the applicant b. The exact names and addresses of each respondent PLEASE NOTE THAT THERE HAVE NOW BEEN A NUMBER OF INFORMATION REQUESTS, NONE OF WHICH HAVE BEEN FULLY RESPONDED TO -- IF INFORMATION IS NOT SUBMITTED IN THE CORRECT FORMAT ADDRESSING THE ISSUES RAISED, YOUR APPLICATION MAY REQUIRE TO BE REJECTED. Please reply to this office with the necessary information by 29 December 2021".*
11. There has been no response from the Applicant to this letter and a number of requests for further information are outstanding.

DECISION

12. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-
13. *"Rejection of application*

Rule 5 (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 lodgement 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 made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) the application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

(5) Any request for service by advertisement must provide details of any steps taken to ascertain the address of the party and be accompanied by a copy of any notice required under these Rules which the applicant attempted to serve on the other party and evidence of any attempted service.

(6) the First Tier Tribunal may direct any further steps which should be taken before the request for service by advertisement will be granted.

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."

14. 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 5(4) and Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

15. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. 9. At page 16, he states:- "*What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic*". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

16. The applicant has failed to respond with full information to the Tribunal's request for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of Rule 5 the application should not be accepted as outstanding documents have not been received. I consider that the applicant's failure to respond to the Tribunal's request gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application.

17. In particular the Applicant has failed to show their right title and interest to raise this action. They have failed to show how and when the notice to leave was served on the first Respondent and failed to show any notice to leave or service on the second tenant whom they wished to add to the application. They have not provided any reasons for raising the action prematurely and have not responded at all to the Tribunal's last letter of 15th December and only partially responded to previous requests for information.

1. Accordingly, for this reason, this application must be rejected upon 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. It is open to the Applicant or the owner and landlord of the Property to submit a fresh application which addresses these outstanding matters.

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.

J Todd

Jan Todd
Legal Member
19th January 2022