



**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/20/2298

Re: 2 Chamfron Gardens, Stirling, Stirlingshire, FK7 7XU ("the Property")

**Mr Archibald Cowan Apartment 519, Marsa Gardens, The Wave Al Mouj, Muscat, Oman
("the Applicant")**

Mr David Grierson 2 Chamfron Gardens, Stirling, FK7 7XU

("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 2 November 2020, an application dated 1 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 as 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:

 - 1. Please provide evidence of service of the notice to leave.*
 - 2. Please provide evidence to support ground 5 of recovery “Family member intends to live in property”, the 2016 Act sets out that “Evidence tending to show that a member of the landlord’s family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.*

Please reply to this office with the necessary information by 1 December 2020. 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 10 December 2020 a further request for the said information was sent to the Applicant.
7. On 21 January 2021, a further letter was sent to the Applicant, in the following terms:

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

The Tribunal has requested further information on two occasions namely 17th November and 10th December 2020. That information is required to allow your application to be properly considered, and you have failed to fully respond. Please let us now have the evidence previously requested ie evidence that a family member intends to live in the let property, for example an affidavit from you or your wife.

Failure to provide the required information within 14 days will mean your Application will have to be refused.

It would appear that you have made an earlier application for eviction of this tenant which has been granted by the Tribunal namely FTS/EV/20/2007. Can you please confirm that this application number EV/20/2298 is no longer proceeding and you wish to withdraw it or please advise why it should still be considered?

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."

8. The Applicant contacted the tribunal's administration by telephone and indicated that he wished to withdraw the Application. He was asked to confirm the position in writing in order to comply with Rule 15 of the 2017 Rules. He failed to do so.
9. 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.
10. 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."

11. After consideration of the Application, the attachments, the repeated further information requests, the other application for eviction made under different reference number and the Applicant's stated intention to withdraw the present Application, 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).

12. 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.

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

Legal Member

16 February 2021