



**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

22 Culross Hill, East Kilbride, G74 1HU ("the Property")

Case Reference: FTS/HPC/EV/20/0771

**Applicant: Home from Home 64a Cumberland Street, Edinburgh, EH3 6RE ("the
Applicant")**

Mr Tauseef Arshad 22 Culross Hill, East Kilbride, G74 1HU ("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 27 February 2020, an application was received from the Applicant ("the Application"). The Application was made under Rule 109 of the 2017 Rules, being an application for an order for eviction under section 51(1) of the Private Housing (Tenancies) Scotland Act 2016 ("the 2016 Act").
2. An application made in terms of Rule 109 and Section 51(1) of the 2016 Act 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 grounds for eviction;

(b) 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 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; and
- (iv) A copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable); and

(c) be signed and dated by the landlord or a representative of the landlord.

3. The Applicant submitted an incomplete Application Form as the Applicant did not supply all of the required information. The Application was not accompanied by all of the required documents.
4. On 5 March 2020, the tribunal's administration requested further information from the Applicant, namely a copy of the notice given to the local authority as required under section 56(1) of the 2016 act. The Applicant responded and provided a copy of the said notice.
5. On 24 April 2020, the Application paperwork was considered by a legal member of the tribunal with delegated powers of the Chamber President. The legal member determined, in terms of Rule 5 of the 2017 Rules, that the Application had not been lodged in the manner set out in Rule 109 of the 2017 Rules. The legal member requested further documents from the Applicant in accordance with Rule 5(3) of the 2017 Rules, as follows: *"The Property is owned by Mr Frank Hopper. Please provide his written authorisation for you to act in this matter;*
 - a. *Please provide a copy of the tenancy agreement;*
 - b. *Please provide evidence of service of the Notice to Leave on the tenant."*
6. The Applicant was asked to reply with the necessary information by 8 May 2020 and advised that if the tribunal does not hear from her within this time, the President may decide to reject the application.
7. On 10 May 2020, the Applicant responded and provided further information.
8. On 29 June 2020, the Application paperwork was considered by a legal member of the tribunal with delegated powers of the Chamber President. The legal member determined, in terms of Rule 5 of the 2017 Rules, that the Application had not been

lodged in the manner set out in Rule 109 of the 2017 Rules. The legal member requested further documents from the Applicant in accordance with Rule 5(3) of the 2017 Rules, as follows: *“1. Please provide a copy of the tenancy agreement, as previously requested. If there is no written agreement please provide information regarding the tenancy, including the start date, together with some evidence of the existence of a tenancy. 2. You have provided a further copy of the Notice to Leave. Please confirm how and when this was given to the Respondent, and provide evidence of this, if available. 3. You have provided a death certificate. However, you have not provided any information or evidence which establishes that you are entitled to make the application. The property is in the sole name of Mr Hopper. Please confirm if you are the Executor of the estate or if you inherited the property. You will require to provide evidence of this. 4. Please confirm how and when the Section 11 Notice was given to the Local Authority and provide evidence of this, if available.”* The Applicant was asked to reply with the required information by 13 July 2020 and advised that if she did not do so, the Application may be refused.

9. On 11 August 2020, the application was considered by a legal member. The legal member considered the request for further information sent to the Applicant on 29 June 2020 and noted that she had not responded. The Applicant was asked to reply with the necessary information by 25 August 2020 and advised that if she did not do so, the President may decide to reject the application.
10. On 11 August 2020, the Applicant responded and stated: *“Hello, The tenant Tauseef Arshad has given me notice to leave he will be moving out by the end of the month Regards Anne Hopper”.*
11. On 12 August 2020, the tribunal’s administration acknowledged receipt of the Applicant’s email and responded, stating: *“Please advise if you wish to continue with or withdraw your application. If you wish to withdraw the application, proceedings will come to an end and the case will close.”*
12. The Applicant did not reply to the tribunal’s email of 12 August 2020.
13. By letter of 4 September 2020, the Tribunal informed the Applicant that the following further information was required from her before the Application can proceed to the Chamber President for consideration: *“You previously advised that the Respondent was due to vacate the property. If this has occurred, please confirm that you wish to withdraw the application. If the Respondent has not vacated the property, please confirm if you wish to continue with the application. Is so, you must provide a response to the letters issued to you asking for further information.”*
14. The Applicant was asked to reply to the tribunal’s office with the necessary information by 18 September 2020, otherwise the Application may be rejected.
15. The Applicant failed to respond to the request for further information.
16. On 5 October 2020, the Application was considered by a legal member acting under the delegated powers of the Chamber President, in terms

of Rules 5, 8 and 67 of the 2017 Rules.

17. 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."

18. After consideration of the Application, the attachments, and the further information requests, 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. Although the Applicant has responded to some of the tribunal's requests for further information, she 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).

19. 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.

Susanne Tanner

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

Legal Member

5 October 2020