



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

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

in connection with

**Case Number FTS/HPC/22/EV/2835**

**Baker Bradley Dundee Limited (Applicant)**

**Mr Liam Chaplain (Respondent)**

**Pavillion Properties Limited (Applicant's Representative)**

**78 J Peddie Street, Dundee, DD1 5LT (House)**

**BACKGROUND**

1. On 15<sup>TH</sup> August 2022 the Applicants' Representatives lodged an application for eviction of the Respondents from the property at ('the property'). The application was made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The ground of eviction set out in the application is that "the only rental payment received was late, and 3 months are outstanding."

2. The applicant lodged a copy of the tenancy agreement between the parties; a copy of the Notice to Leave (and track and trace receipt); a copy rent statement and a copy of the section 11 Notice to the Local Authority.

3. The Tribunal administration on the instructions of a legal member requested further information from the Applicants on 15<sup>th</sup> September 2022 as follows:

*“1. Please provide the post office certificate of posting or other evidence which shows when the Notice to leave was sent. The track and trace only confirms when it was delivered. The date of posting is required to establish if the correct period of notice has been given.*

*2. Please provide evidence that the section 11 notice was issued to the Local Authority.*

*3. The registered landlord for the property is Baker Bradley Dundee Ltd. Please advise if the application should be amended to reflect this.*

*4. Please provide evidence of ownership of the property as the title sheet cannot be located with the postal address.*

*5. If the Applicant has complied with the Rent Arrears Pre Action Requirements regulations, please provide evidence of this.*

*6. Please submit a mandate authorising you to submit the application.”*

4. The Applicant’s representative responded and provided a postal receipt for a date in August 2022, evidence of submitting the s11 notice and a copy title. The Tribunal wrote again on 1<sup>st</sup> November 2022 requesting further information as follows:-

*“As previously requested please clarify the name of the Applicant. The title is in the name of Baker Bradley Dundee Limited, so is the landlord registration. The Applicant is stated as the Bakerson Property Group and neither matches the landlord stated on the tenancy agreement, Bakerson Property Group Trust. You must provide the correct details of the organisation which has title and interest to make the application and you will require to explain who this is. You may wish to take legal advice.*

*2. The authorisation you provided does not disclose how the person issuing it has authority to do so on behalf of any of the organisations stated above. It also clearly is given on the assumption that you will be using a solicitor in the matter.*

*Please provide an authorisation from the relevant organisation clearly authorising you as agent.*

*3. The recorded delivery slip provided shows the posting of a document on 10 August 2022. This does not appear to relate to either the Notice to Leave, which is dated 29.4.22 or the S 11 notice, for which you have provided the email sending this to the local authority on 28.9.22. Please provide the recorded delivery confirmation of sending for the Notice to Leave now as previously requested.*

*4. Please provide your calculation of the 28 day period for the date of 1 June 2022 stated in part 4 of the Notice to Leave in light of the wording of S 62 (4) and (5) of the Private Housing (Tenancies) (Scotland) Act 2016.*

*5. Please, as previously requested, provide evidence of the compliance with the pre-action requirements.”*

5. The Applicants representative responded on 11<sup>th</sup> November and advised *“Hi I have discussed this with the landlord, the title is in Baker Bradley Dundee Limited, the application is to be made under this. Do we require a new application? The person who has given Authorisation is a director of Baker Bradley Dundee Limited. Unfortunately we no longer seem to have the receipt for delivery of the notice to leave. The form was filled out using the online system and auto populated the date, the notice was sent on 29th April 2022. If you do not agree with the date of 1st June then your online form system is flawed. The tenant was sent the pre-action documents however we do not have proof of postage for this unfortunately.”*

6. The Tribunal wrote again on 8<sup>th</sup> December 2022 and stated:-

*“A legal member of the Tribunal with delegated powers of the Chamber President has considered the application again and has determined that the following information is required before the matter can progress: 1. Please provide an amended application form. 2. Please provide authorisation on headed noted paper of Baker Bradley Dundee Limited showing the capacity of the authorised signatory. 3. In the absence of a receipt for delivery of the Notice to Leave, what evidence does the Applicant intend to provide to establish the date of which the Notice to Leave was served? 4. You have not answered the*

*point made in our letter of 1 November. You may wish to refer to the Private Housing (Tenancies) (Scotland) Act 2016, or alternatively seek advice before responding. 5. Can you provide copies of the pre-action documents referred to? Please respond within 14 days. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application.”*

7. No response was received from the Applicants.
8. The Tribunal wrote a further letter on 31<sup>st</sup> January 2023 stating:-  
*“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: You have failed to respond to the Tribunal’s request for further information. A further copy of the letter is attached. Please provide a response within 7 days or the application may be rejected. Please note that the Tribunal has to be satisfied that the Notice to Leave was given to the Respondent. If you are unable to provide the post office receipt and track and trace report, you must provide other evidence which shows when it was sent and confirms that it was delivered/received. Please reply to this office with the necessary information by 6 February 2023. If we do not hear from you within this time, the President may decide to reject the application.”*
9. No response to the correspondence has been received from the Applicants or their representatives.

## **DECISION**

10. I considered the application in terms of Rule 5 and Rule 8 of the Procedural Rules.
11. Rule 5 provides:-  
“Requirements for making an application:  
  
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 to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.”

12. Rule 8 provides:

“8.— Rejection of application

(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.”

13. The applicant has failed to respond to the Tribunal’s substantive requests 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.

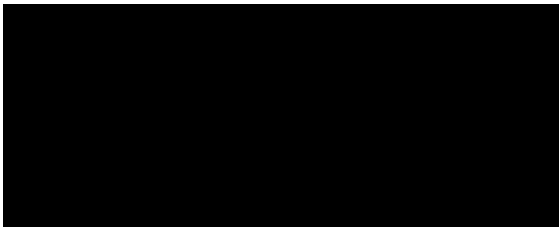
14. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

### **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.



Jan A Todd  
Legal Member  
28<sup>th</sup> February 2023