

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL  
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER  
PRESIDENT**

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

in connection with

228 Holburn Street, FFL Holburn Aberdeen AB10 6DB

**Case Reference: FTS/HPC/EV/19/3568**

**William Gill Carrol ("the applicant")**

**James Alexander ("the respondents")**

1. On 6 December 2019 an application dated 21 November 2019 was received from the applicant. The application was made under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The following documents were lodged in connection with the application:- Tenancy Agreement, page 1 of Notice to Leave
2. On 6 January 2020 the First-tier Tribunal (the Tribunal) asked the Applicant to provide further information on the following issues: ""1. Evidence showing that the eviction ground or grounds have been met 2. Confirm how the Notice to Leave was issued to the tenant and provide evidence of this, if available, 3. A copy of the notice given to the local

authority as required under section 56 (1) of the 2016 act 4. Evidence that the notice to the local authority under Section 56 (1) of the 2016 act has been served to the local authority." A reply was requested by 20 January 2020.

3. On 17 January 2020 the Tribunal received a letter from the applicant's representatives Inksters Solicitors asking for an extension for 7 days due to pressure of work. The Tribunal extended the period for a reply to 27 January 2020. No reply was received.
4. The documents referred to above are referred to for their terms and held to be incorporated herein.

## DECISION

5. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule 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."*

6. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

### **REASONS FOR DECISION**

In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) has to 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
- iii. a copy of the notice given to the local authority as required under section 56 (1) of the 2016 Act

The Tribunal advised the Applicant's Representative that the application was incomplete and required further documents to be produced. The Applicant was given until 20 January 2020 to produce the documents required by Rule 109 (b) (i) and (iii) and evidence of the service of the notice to leave. As of 5 February 2020 this has still not been provided.

Furthermore, although this was not mentioned in the Tribunal's request for further information, the application was lodged with only the first page of the notice to leave and thus also did not comply with the requirement to lodge the notice to leave stated in Rule 109 (b) (ii).

The lodging requirements for an application under Rule 109 are not met. The application was not validly made. The Tribunal cannot entertain the application. The application is rejected.

### **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.**

Petra Hennig McFatridge

Legal Member

5 February 2020