



**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/21/1406

Re: Flat M, 2 Langlands Court, Glasgow, G51 3PZ ("the Property")

**Burnview Properties Scotland Limited, having a place of business at Prieston Road,
Bridge of Weir, PA11 3AW ("the Applicant")**

**KPM Residential Limited, 23 Park Circus, Glasgow, G3 6AP ("the Applicant's
Representative")**

**Miss Gemma Harris and Mr Steven Andrew Ruddy, Flat M, 2 Langlands Court, Glasgow,
G51 3PZ ("the Respondents")**

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. An application dated 11 June 2021, was received from the Applicant's
Representative ("the Application"). The Application was made under Rule 109 of the
2017 Rules, being an application for an order for eviction in relation to a private residential
tenancy. The Applicant's Representative attached a number of documents, namely a copy
of a tenancy agreement, a 'notice to leave' and a rent statement.**

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. *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*

iv. ...

c. *Be signed and dated by the landlord or a representative of the landlord.*

3. On 24 June 2021, the Application was considered by a Legal Member with the delegated powers of the Chamber President and a letter was sent to the Applicant's Representative, as follows:

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

1. You have applied for an order for possession under Rule 109 and the tenancy agreement you have lodged is a Private Residential Tenancy however you refer to Ground 8 in the application form and rent arrears of 3 consecutive months, however under Schedule 3 of the 2016 Act Ground 12 is the ground that applies to rent arrears please advise if you wish to change section 5 of the application form to refer to Ground 12?

2. Please advise how and when the Notice to Leave was served on the Respondents and please provide evidence of this?

3. This application appears to be premature. The notice to leave is dated 4th May 2021 and specifies that an application will not be submitted to the Tribunal before 7th November 2021. The period of notice required in terms of the Coronavirus (Scotland) Act 2021 is 6 months. Please confirm if you wish to withdraw this application and re-submit it after expiry of the correct notice period, or there is provision in section 54 of the Private Housing (Tenancies) (Scotland) Act 2016 for you to ask the tribunal to consider your application where the notice period has not expired. Please confirm if you wish to make such a request to the tribunal?

4. Further if you do wish to proceed with your application then please provide a written note of why it would be reasonable for the tribunal to consider your application prior to the notice period expiring.

5. In the event that you wish to ask the Tribunal to entertain the application, please also provide evidence that the Applicant has complied with the Rent Arrears Pre-Action

Requirements (Coronavirus) (Scotland) Regulations 2020. The Tribunal would refer you in this regard to the Scottish Government Guidance (“Sustaining Tenancies, Maintaining Homes (Summary Guidance)”). Failure to comply may affect whether the Tribunal will be satisfied that it is reasonable to grant an order.

6. Please also supply a form 11 notice in terms of the Homelessness etc, (Scotland) Act 2003 and provide evidence it has been served on the local authority.

7. With regard to the Notice to Leave the ground you are relying on is Ground 12 that the rent has been in arrears for at least 3 months. It appears that from the Notice to leave and the rent statement lodged that the first arrears accrued from 24th August 2020. The Notice to leave was served in 26th October 2020. It does not appear that at least three months of arrears were established at the date of service. Having regard to the Upper Tribunal decision in the case of Majid v Gaffney and Britton 2019 UT 59 please clarify the basis upon which the Tribunal can consider the application as in that decision the Upper Tier Tribunal upheld that at least 3 months arrears had to be owing at the date of service and at the 26th October only 2 months arrears are potentially due and owing?

Please reply to this office with the necessary information by 12 July 2021. If we do not hear from you within this time, the President may decide to reject the application.”

4. The Applicant’s Representative failed to respond to the request for further information.
5. On 27 July 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 109 of the 2017 Rules.
6. 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."

7. After consideration of the Application, the attachments and the further information request, 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's Representative has failed to respond to the further information request. The Applicant's Representative 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).

8. 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.

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

Legal Member

27 July 2021