



**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/21/1733

Re: Flat 1 Right, 8 Castle Street, Rothesay, PA20 9HA ("the Property")

Mr James Kerr, 23 Crichton Road, Rothesay, PA20 9JR ("the Applicant")

**Mr Michael Wheaton, Flat 1 Right, 8 Castle Street, Rothesay, PA20 9HA ("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. An application dated 13 July 2021, 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 in relation to a private residential tenancy. The Applicant's Representative attached a number of documents, namely part of a copy tenancy agreement, notice to leave, part of a section 33 notice and two pieces of copy correspondence.
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 3 August 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:

☐ *Please provide a full copy of the lease, the copy enclosed is incomplete, and does not contain the landlord details,*

☐ *Please provide evidence of service of the notice to leave.*

☐ *Please provide your comments on the notice period in the Notice to Leave.*

You refer to two grounds, Ground 11- breach of tenancy and Ground 14 - antisocial behavior. Ground 11 requires 6 months' notice and Ground 14 requires 28 days' notice. As two grounds are relied upon, it is the ground with the longest period of notice that must be given. Accordingly, the Notice to Leave served does not provide the tenant with the correct notice under the Coronavirus (Scotland) Act 2020.

☐ *Please either withdraw the application and re-apply when the correct notice period has expired or confirm that you wish to proceed with the application on the basis that you intend to ask the Tribunal to entertain the application although it is in breach of Section 54 (Section 52(4) of the Private Housing (Tenancies) (Scotland) Act 2016).*

☐ *A decision as to whether it is reasonable for the Tribunal to entertain the application will not be made at the application/sifting stage, but by the Tribunal that deals with the application if it is accepted. You will have to satisfy the Tribunal that it is reasonable to do so at the CMD or subsequent Hearing.*

☐ *You are required to provide evidence to show that the grounds have been met. It is noted that you have submitted an email from licensed premises affected by the alleged behavior. Please advise if this is total information you have to support the grounds for recovery. It is noted that the police appear to have been involved with the respondent in relation to anti-social, please provide any information from the police to support the grounds. If you have any further information to support the grounds please submit this information.*

Please reply to this office with the necessary information by 17 August 2021. If we do not hear from you within this time, the President may decide to reject the application.

4. The Applicant failed to respond to the request for further information.

5. On 31 August 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:

- *Please provide a response to the previous further information request.*

Please reply to this office with the necessary information by 14 September 2021. If we do not hear from you within this time, the President may decide to reject the application.

6. The Applicant failed to respond to the request for further information.
7. On 4 October 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:

The Tribunal wrote to you on 3 August 2021 and 18 August 2021. However, you have not provided a reply. Should you not insist on the application please let us know that you are withdrawing it meantime so that the case can be closed.

If you wish it to be considered further the Tribunal must have the following documents, without these the application is incomplete and will be rejected:

- 1. S 11 Notice and proof of service of same*
- 2. Full copy of the tenancy agreement*
- 3. Proof that the Notice to Leave has been served on the Respondent.*
- 4. Please note that you have also not replied addressing the issue of the notice period. Please provide your reply now.*

Please reply to this office with the necessary information by 18 October 2021. If we do not hear from you within this time, the President may decide to reject the application.

8. The Applicant failed to respond to the request for further information.
9. On 10 November 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.
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 and the three 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. The Applicant has failed to respond to the three 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.

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

Legal Member

10 November 2021