



**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

Case reference FTS/HPC/EV/23/1147

**Parties**

**Ms Natalie Candusso (Applicant)**

**Mr Samuel Tessler (Respondent)**

**5 GF3 Brunswick Road, Edinburgh, EH7 5NG (House)**

**791 Cumbernauld Road 2/2, Glasgow, G33 2EG (House)**

1. On 10 April 2023 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109, which relates to tenancies under the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and stated as the grounds applicable ground 5 of schedule 3 of the 2016 Act, namely

that a family member intends to live in the property.

2. The application was accompanied by the following supporting documentation: Notice to Leave. No S 11 notice and no tenancy agreement and no evidence regarding ground 5 were provided.
3. The FTT wrote to the applicant on 13 April 2023 requesting evidence of service of the Notice to Leave, a copy of the S 11 notice and evidence of service of same and evidence of the ground applying. On 26 April 2023 the Applicant provided the email dated 27.7.2022 sending the Notice to Leave but no further documents.
4. In correspondence dated 22 May 2023 the FTT requested further information from the Applicant, in particular the S 11 notice including the required information and evidence of this having been given to the local authority. The Applicant replied on 28 May 2023 that she did not know what was required and had not served a document on the local authority. She asked for advice. The FTT wrote again on 28 June 2023 advising her that the Tribunal is not able to provide advice to parties and stated "If you wish advice then you should contact Shelter Scotland, CAB or a solicitor". The date for a reply was given as 12 July 2023. The Applicant was informed that should no reply be received the application may be rejected.
5. No reply has been received to this last request.
6. The file documents are referred to for their terms and held to be incorporated herein.

## **DECISION**

7. 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."*

- 8. 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**

1. The lodging requirements for an application under rule 109 (b) include the requirement to lodge (i) evidence that the 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 under S 11 of the Homelessness (Scotland) Act 2003 as required in s 56 of the 2016 Act
2. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. The requirements of such a notice is set out in Regulation 2 and Schedule 1 of The Notice to Local Authorities (Scotland) Regulations 2008 as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017. Schedule 1 of the 2008 regulations sets out the format of the form that has to be used. Such a form has not been included in the application documents.
3. Despite repeated requests to produce the necessary S 11 notice this was not submitted.

4. It would not be appropriate for the Tribunal to accept an application which is incomplete and does not meet the lodging requirements in terms of rule 109 of the Procedure Rules and the requirements for a valid application stated in S 56 of the 2016 Act as set out above.
5. The application is thus 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  
2 August 2023