



**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

**7 Rolland Buildings, The Cross, Windygates, KY8 5DD**

("the property")

**Case Reference: FTS/HPC/EV/20/1773**

**Mrs Natasha Johnstone, Larachbeag, Dunolly Gardens, Windygates, Fife, KY8 5BZ**  
("the applicant")

**Mr Paul McMullan, UNKNOWN, UNKNOWN ("the respondent")**

1. On 16 August 2020 the applicant made an application to the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules 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, email from joint tenant, application for service by advertisement.
2. There was no S 11 notice to the local authority and no notice to leave lodged with the application.

3. On 7 September 2020 the applicant was written to by FTT and the following was requested: *“You have indicated that both respondents have vacated the property and returned the keys to you. 1. Please clarify the basis upon which you are seeking an order for eviction. 2. If you wish to proceed with the application, please note that the application will require to be made in relation to both Respondents, as joint tenants. You will require to provide a copy of a Notice to leave which has been given to the other tenant, with evidence of when and how it was given. You will also require to submit a copy of the section 11 Notice sent to the Local Authority. Please confirm if you wish to amend the application and provide copies of the Notices, with evidence that they have been given/sent. 3. You have submitted an application for service by advertisement for the Notice to Leave. Please provide evidence of attempts to obtain an address for the Respondent, such as a trace carried out by a tracing agent or Sheriff Officer. Please also provide the Notice to leave which you wish to have posted on the Tribunal website. In relation to Part 4 of the notice, you will be required to calculate the earliest date of the application, which should be the day falling after the notice period expires. The period of notice will depend on the eviction grounds being used. Information is available on the Tribunal website regarding this. Please note that the start date for calculation of the Notice period will be 16 October 2020 but only if a valid Notice in the correct format and with the correct date, is received by the Tribunal by 29 September 2020. You may wish to consider taking advice from a solicitor or CAB”*
4. No reply was received.
5. On 20 October 2020 a further reminder letter was sent. Again no reply was received.

## DECISION

6. 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."*

7. 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 FTT has good reason to believe that it would not be appropriate to accept the application.

#### **REASONS FOR DECISION**

8. In terms of Rule 109 (b) of the Procedural Rules an application for an eviction order under S 51 of the 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
9. The documents stated in Rule 109 (b) i. – iii. are missing from the application. It is not possible for the Tribunal to entertain an application unless the lodging requirements for such an application are met. The rule is based on the requirements in the Act. In terms of S 52 of the Act (3) *"an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave, which has been given to the tenant."* This was not provided. In terms of S 56 (1) of the Act *"a landlord may not make an application*

*to the First-tier Tribunal 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 property is situated."*

10. It would not be appropriate for the Tribunal to accept an application that is made other than in accordance with the requirements stated in the Act. The applicant was advised what documentation and information was required. No reply was received by the FTT to the two letters requesting further information. No Notice to Leave was provided, no S 11 Notice was provided.
11. The application is rejected because the applicant has not provided the documents which are required for such an application as stated in the Act and the application does not meet the lodging requirements stated in terms of Rule 109 of the Procedure Rules. The application has to be 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

16 November 2020