



**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

**51 Mount Pleasant, Armadale, West Lothian, EH48 3HA**

**Case Reference: FTS/HPC/EV/21/0731**

**Miss Molly Glen ("the Applicant")**

**Mr Ryan Mullen ("the Respondent")**

1. On 23 March 2021 an application dated 11 March 2021 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 Applicant advised that her representative was to be Mandy Glen. The following documents were lodged in connection with the application:- Tenancy Agreement, Notice to Leave, Rent Statement.
2. On 6 April 2021 the First-tier Tribunal (the Tribunal) asked the Applicant's representative to provide further information on the following issues: " Please provide written authority from the applicant that you are instructed by them to act for them in this matter. Please provide a copy of the section 11 notice and evidence of service of it to the local authority. Please provide evidence of service of the notice to leave. Please provide evidence of the ground that you are relying on, for example an affidavit confirming that you daughter

requires to return to the property and the reason why. The notice to leave submitted does not refer to the failure to pay rent as a reason for eviction; if you also wish to rely on this ground, then you require to provide a copy of a notice to leave which you issued to the tenant giving him notice of this ground of eviction too; together with evidence of service. The notice period for rent arrears is 6 months. Please reply to this office with the necessary information by 20 April 2021". No reply was forthcoming.

3. On 5 May 2021 the Tribunal sent a further letter enclosing a copy of the letter dated 6 April 2021 and advised the Applicant's representative to provide the information by 19 May 2021, otherwise the application may have to be rejected by the Tribunal. 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 April 2021 and thereafter until 19 May 2021 to produce the documents required by Rule 109 (b) (i) and (iii) and evidence of the service of the Notice to Leave. As of 1 June 2021 this has still not been provided.

The lodging requirements for an application under Rule 109 are not met.

In terms of S56 of the Private Housing (Tenancies) (Scotland) Act 2016 Restriction on applying without notifying local authority “(1)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 let property is situated. (2)Notice under subsection (1) is to be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.” The Application was not accompanied by a Notice in terms of S 56 as required. The Tribunal requested this document on two occasions and no reply was received.

The application was not validly made. It would not be appropriate for the Tribunal to accept 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**



Petra Hennig McFatridge

Legal Member

1 June 2021