



**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

**44 Trondra Place, Glasgow, G34 9AX (the property)**

**Case reference FTS/HPC/EV/21/1990**

**Parties**

**Dr Richard Chibanga (Applicant)**

**Mr Jordan Brown, Ms Samantha Blaney Wray (Respondent)**

1. On 18 August 2021 the applicant made an application 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 following documents were lodged in connection with the application:- Extract of the Model Private Residential Tenancy Agreement for the tenancy commencing on 2 January 2018, further tenancy agreement showing as start date 15 January 2018 described as a Short Assured Tenancy , Notice to Leave dated 15 April 2021 showing as the date proceedings could be raised as 30 April 2021, letter from Glasgow City Council re Housing Benefit, screenshots of an exchange by

text with a Housing Assistant, cover email giving background information .

2. On 30 August 2021 the First-tier Tribunal (the Tribunal) asked the Applicant to provide further information on the following issues: *“Before a decision can be made, we need you to provide us with the following: 1. Please provide a copy of the whole tenancy agreement as it appears that several pages are missing. 2. Please confirm how and when the Notice to Leave was given to the Respondents, and provide evidence of this. 3. The Notice to leave appears to give 2 weeks notice to the Respondents. The notice period for grounds 6 and 12 is 6 months. If the Notice was given on 15 April 2021, the notice cannot be relied upon until 18 October 2021. Please confirm if you wish to withdraw the application and re-submit it after the notice period has expired. Alternatively, you can ask the Tribunal to entertain the application although it is in breach of section 54 of the 2016 Act, which deals with notice periods. If you wish to proceed on this basis you should note that you will require to satisfy the Tribunal (at a case management discussion or hearing) that it is reasonable to do so. This matter will not be decided at this stage. 4. Please provide a copy of the section 11 notice sent to the Local Authority and provide evidence of this. 5. Please provide evidence in support of the eviction grounds. For ground 12 you should provide a rent statement for the whole of the relevant period. Which shows the rent due, the rent paid and the running total outstanding. For ground 6 please provide a copy of the grant of planning permission for the change of use and any alterations or similar evidence. 6. Please confirm if you have complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020. Compliance will be taken into account by the Tribunal when assessing whether it is reasonable to grant an eviction order. Guidance and template letters can be found on the Scottish Government website.”* No reply was received.
3. The documents referred to above are referred to for their terms and held to be incorporated herein.

## **DECISION**

4. 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."*

5. 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**

6. 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 that the application was incomplete and required further documents to be produced. The Applicant was given guidance on the opportunity to ask the Tribunal to consider the application despite the matter of the notice period in terms of S 54 of the Act. The applicant was advised in detail what further documents were required for the application. By 29 September 2021 this has still not been provided.

- 7. 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 and it was not provided. Without this the application cannot proceed as stated S 56 of the Act.
- 8. The Notice provided with the application did not comply with the notice period requirements of 6 months, being dated 15 April 2021 and giving as the date in terms of S 62 (4) the Act the date of 30 April 2021. Furthermore no proof of service of the Notice to Leave was provided. The Applicant was advised to provide information by 13 September 2021 at the latest and has not provided this.
- 9. The applicant has not provided as required evidence of the grounds stated in the application. In terms of ground 6 (3) of schedule 3 of the Act this would tend to be e.g. planning permission which would be required if the let property is to be used for the intended purpose. No documentary evidence was provided. In terms of ground 12 the applicant was asked to provide a rent statement. This again was not provided.

10. The application was not validly made. It did not meet the lodging criteria for an application under Rule 109.
  
11. The notice period for the grounds 6 and 12 of schedule 3 of the Act as stated in the application is 6 months. In terms of paragraph 10 (1) (b) of schedule 1 of the Coronavirus (Scotland) Act 2020 “where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1-9 it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.” In terms of said legislation it was explained to the applicant that the Notice to Leave notice period would expire correctly on 18 October 2021 if given on 15 April 2021. The application in any event is premature at this stage.
  
12. Furthermore the Applicant has failed to reply to requests for further information and thus appears not to be insisting on the application any longer.
  
13. It would not be appropriate for the Tribunal to accept the application for the reasons stated above. 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 McFatrige

Legal Member

29 September 2021